

Indian Citizen Series.

# THE INDIAN CONSTITUTION

*Containing the fully Annotated Law of the New Constitution in British India, as embodied in the Consolidated Government of India Act, 1915-1919, The Elections Rules, Indian Elections Offences and Enquiries Act (1920), Indian & Provincial Legislative Rules etc.,*

AND

*All Relevant Documents relating to the Indian Constitutional Reforms of 1919*

EDITED WITH AN INTRODUCTION

BY

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**THACKER, SPINK & CO.,**

**CALCUTTA & SIMLA :**

**1920.**

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Price Rs. 12/-



PRINTED BY K. C. NEOGI,  
NABABIBHAKAR PRESS,  
*91/2, Machua Bazar Street, Calcutta.*

TO  
THE SACRED MEMORY  
OF  
HIS MOTHER

This book is humbly dedicated

BY  
THE AUTHOR

As a token of Respectful and Affectionate  
Remembrance.

## PREFACE.

Whatever some people may say to the contrary, all reasonable and soberminded men agree in thinking that the measures of constitutional reform about to be inaugurated in this country constitute "substantial steps towards the progressive realization of responsible government in British India." It has been my endeavour to give to the public a book which will enable it to appreciate the full scope and import of the great measures of constitutional reform, so that it may judge them in the same magnanimous spirit in which they have been offered by the Mother of Parliaments. Properly to appreciate the nature and scope of the changes, one must not only go through the Government of India Act of 1919, but one must read and understand the provisions of the Consolidated Act and the various documents relating to the Reforms which are but the brick and mortar out of which the super-structure of the reformed constitution of British India has been raised.

Following the directions given in the Second Schedule to the Government of India Act, 1919, I have prepared this edition—the first of its kind published in India since the passing of the Act—of the Consolidated Government of India Act, embodying all the amendments and additions made by the Acts of 1916 and 1919: to indicate the amendments and additions made by the Act of 1919 I have included them within inverted commas; I have also given references to sections in the older statutes on which those of the Consolidated Act are based.

In the Notes on the sections of the Act I have utilized the various reports and speeches (reprinted in Part II of this book) which explain the policy and reasons underlying them: I have also fully utilized the Rules etc., that have been published upto the 30th of September, 1920 under the proper headings in the Notes and the four Appendices to Part I of this book. I have tried, wherever possible, to give a comparative estimate of the Indian and the Colonial political institutions and constitutional practices; in short, I have tried to make the annotations as up-to-date, accurate, and exhaustive

## PREFACE.

as possible within the limited time at my disposal ; and I hope the learned reader will pardon any imperfections or inaccuracies that might be found therein.

The book has had to be divided into two parts with separate paging, as both the parts were being simultaneously printed. The second Part contains a full reprint of all the important State Papers bearing on the Reforms beginning with the Declaration of August, 1917 and ending with the Rules published by the Government of India upto the 30th of September, 1920 : it also includes the speeches on the Government of India Bill delivered by Lords Sinha and Selborne in the House of Lords and by the Rt. Hon. Mr. Montagu in the House of Commons. This book is, really speaking, supplementary to my "*Indian Constitutional Documents*" and the two should be read together.

I should be failing in my duty if I did not gratefully acknowledge the constant and invaluable help rendered to me in diverse ways by my revered father, Babu Lalmohan Mukherji, B.L., author of *Indian Case-Law on Ejectment*, in the preparation of this volume. I should also record my gratitude to Babus Shyamapada Banerji and Nirapada Banerji,—proprietors of the "Nababibhakar Press" but for whose ungrudging assistance in passing the book through the press this book of about 1100 pages could not have been published within two months of its being sent to the press—a record performance in the annals of printing in Calcutta. Lastly, I should like to take this opportunity of thanking my ex-pupil, Prof. Pramathanath Sarkar, M.A., and my pupil Babu Prafulla Kumar Sarkar for preparing the index to this volume.

PRESIDENCY COLLEGE,  
Calcutta :  
Dated October the 15th, 1920. }

P. MUKHERJI.

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THE

# INDIAN CONSTITUTION

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## TABLE OF CONTENTS.

### PART I.

I.	INTRODUCTION ... ..	i—xxxii
II.	The Annotated Government of India Act, 1915-1919	1—425
III.	Appendix A—Indian Legislative Rules, 1920 ...	427—440
IV.	Appendix B—Rules for Governors' Legislative Councils, 1920... ..	441—451
V.	Appendix C—The Indian Elections Offences and Enquiries Act, 1920 ... ..	452—460
VI.	Appendix D—Order in Council on the High Commissioner of India, 1920 ... ..	461—464

### PART II.

I.	Royal Proclamation announcing assent to the Government of India Bill, December 23, 1919	1—6
II.	Declaration of August 20, 1917 ... ..	7
III.	Summary of Montagu-Chelmsford Reforms Proposals	8—18
IV.	H. E. Lord Chelmsford's Address to Heads of Provinces, January 13, 1919 ... ..	19—22
V.	Minute by the Lieutenant-Governors of the United Provinces, the Punjab and Burma and the Chief Commissioners of the Central Provinces and Assam, January 15, 1919 ... ..	23—30
VI.	Minute by the Governor of Bengal and the Lieutenant-Governor of Bihar and Orissa, January 16, 1919 ...	31—33
VII.	Government of India's First Despatch on Indian Constitutional Reforms, March 5, 1919 ...	34—143

# TABLE OF CONTENTS.

VIII.	H. E. Lord Chelmsford's Minute, dated March 5, 1919	...	...	...	144—150
IX.	Minute of Dissent by Sir Sankaran Nair, March 5, 1919	...	...	...	151—187
X.	Report of the Franchise Committee	...	...	...	188—219
XI.	Report of the Committee on Division of Functions including	...	...	...	220—376
	(a) Government of India Memoranda for the Functions Committee	...	...	...	313—321
	(b) The Public Services under Reforms	...	...	...	321—335
	(c) Memorandum on Finance	...	...	...	335—376
XII.	Fourth Despatch of the Government of India on the Functions Committee's Report, April 16, 1919	...	...	...	376—443
XIII.	Fifth Despatch of the Government of India on the Franchise Committee's Report	...	...	...	444—479
XIV.	Report of the Marquess of Crewe's Committee on the Home Administration of Indian Affairs, June 12, 1919	...	...	...	480—504
XV.	Report of the Joint Select Committee of the Houses of Lords and Commons	...	...	...	505—529
XVI.	List of Central and Provincial Subjects	...	...	...	530—541
XVII.	Report of Lord Meston's Committee on Financial Relations, March 31, 1920	...	...	...	542—555
XVIII.	H. E. Lord Sinha's Speech on the Second Reading of the Government of India Bill, Dec. 11, 1919	...	...	...	565—587
XIX.	Lord Selborne's Speech on the Government of India Bill, Dec., 1919	...	...	...	588—601
XX.	Rt. Hon. Mr. Montagu's Concluding Speech in the House of Commons	...	...	...	601—604
XXI.	Index	...	...	...	605—612

## INTRODUCTION.

### I.

#### THE GENESIS OF THE REFORMS.

On the 20th of August, 1917, a memorable day in the annals of British Rule in India, the goal of British policy was defined to be "the progressive realization of responsible government in India as an integral part of the British Empire," and on the 23rd of December, 1919, H. I. M. the King-Emperor set the seal of his approval on an Act which, as the first step forward in fulfilment of that policy, "will take its place among the great historic measures passed by the Parliament for the better government of India and the greater contentment of her people."

The genesis of the Reforms and the various stages through which they have had to pass are now matters of history; and they ought to be recorded here. The matter was first broached when Mr. Austen Chamberlain was still Secretary of State for India, and Lord Hardinge, after full consultation with the heads of various Local Governments, put forward certain proposals for post-war reforms. Soon after Lord Chelmsford assumed office, in 1916, the need for a public declaration of policy as to the political future of India was recognised by the Secretary of State for India and His Majesty's Government. The Government of India invited Mr. Chamberlain to visit India and confer with them as to the practical steps to be taken in pursuance of this policy. The policy was declared in August 1917, and the Rt. Hon. Mr. Montagu, to whom, on his acceptance of office, the Government of India had transferred their invitation, came to India in the autumn of that year. Before he had left for India he had already been furnished with the results of prolonged and thorough investigation by his advisers of the India Office as to the possible lines of advance.

The Secretary of State and the Viceroy spent the cold weather of 1917-18 in carrying on a detailed enquiry in India, in the course of which they visited all the larger centres in the provinces and had the benefit of the fullest consultation with

the heads of Local Governments and the members of the Government of India and of non-official opinion of all shades. The result of this inquiry was the Montagu-Chelmsford Report, published in July, 1918, and this was further supplemented by the minute and careful investigations carried on throughout India by the two Committees presided over by Lord Southborough. These three Reports, the Montagu-Chelmsford Report, the Franchise Report and the Functions Report were subjected to exhaustive examination by the Government of India, the results of which are embodied in their First, Fourth and Fifth Despatches on Indian Constitutional Reforms. Yet another Committee, presided over by Lord Crewe, closely examined and reported on the question of the changes to be made in the system of Home Administration of Indian Affairs. Finally, the whole matter was investigated and all the available materials re-examined by a Joint Select Committee of both Houses of Parliament presided over by the Earl of Selborne. After many weeks of hearing of all the available evidence, both official and non-official, Indian and British, and after patient scrutiny of all the documentary evidence, the Joint Select Committee gave their mature conclusions in the shape of an amended Bill and their Report. This last Report—"a State Paper of first-class importance" (*Lord Curzon*) is, in the words of Lord Sinha, "of almost equal importance as the Bill itself, and will be looked upon in India quite as much as the Bill as the charter of our progressive liberties."

## II

### DEVELOPMENT OF REPRESENTATIVE INSTITUTIONS IN INDIA.

✓ The Government of India Act, 1919, is but the natural and inevitable sequel to the long chapter of previous Parliamentary legislation, the history of which has been fully traced in the Introduction to the first volume of the author's "*Indian Constitutional Documents*." The constitution of British India has grown out of successive stages of administration in India from the time of the introduction of British rule up to now. These stages of growth have been succinctly described in the Glorious Royal Proclamation of December 23, 1919—"The Acts of 1773 and 1784 were designed to establish a



regular system of administration and justice under the Honourable East India Company. The Act of 1833 opened the door for Indians to public office and employment. The Act of 1858 transferred the administration from the Company to the Crown and laid the foundations of public life which exists in India to-day. The Act of 1861 sowed the seed of representative institutions and the seed was quickened into life by the Act of 1909. The Act which has now become law entrusts elected representatives of the people with a definite share in Government and points the way to full Representative Government hereafter."

The above extract from the Royal Proclamation contains in a nut-shell the history of the evolution of the new constitution in British India. From 1837 to 1861 the Governor-General in Council was the sole administrative as well as legislative authority for British India. The Indian Councils Act of 1861 for the first time associated with the Governor-General's Executive Council and the Executive Councils of Madras and Bombay a small number of additional members, not less than half of them being non-officials, for the purpose of making laws; it also directed the Governor-General to establish a legislative council for Bengal, and empowered him to establish similar councils for the North-Western Provinces and for the Punjab; these latter two bodies actually came into being in 1886 and 1897 respectively. The legislative councils so established by the Act of 1861 were mere advisory committees by means of which Government obtained advice and assistance in their work of legislation, and the public derived the advantage of full publicity being ensured at every stage of the law-making process. The Councils were not, in the words of the author of *Courts and Legislative Authorities in India*, "deliberative bodies with respect to any subject but that of the immediate legislation before them. They could not enquire into grievances, call for information, or examine the conduct of the executive". The Act of 1861 thus closed a chapter. In the words of the Montagu-Chelmsford Report, "its main interest has lain in the gradual construction and consolidation of the mechanical framework of Government. The three separate presidencies have come into a common system; much of the intervening spaces have been brought under British rule; the legislative and administrative authority of the Governor-

General in Council has been asserted over all the provinces and extended to all their inhabitants ; and the principle of recognizing local needs and welcoming local knowledge has been admitted, so that local councils have been created or recreated and a few non-official and even Indian members have been introduced for the purposes of advice. But, partly at least out of anxiety to prevent the authority of the executive being impaired by any other rival institution without administrative responsibility, it has been expressly declared that councils are a mere legislative committee of the Government and are not the germ of responsible institutions." History, however, will record—as it has already been recorded in the Glorious Royal Proclamation of Dec. 23, 1919—that "the Act of 1861 sowed the seed of representative institutions" in India.

At the next stage we find a decided advance : whereas in 1861 men said "we had better hear what a few Indians of our own choosing have to say about our laws", they said in 1889 "our laws have positively benefited by Indian advice and criticism ; let us have more of it and if possible let the people choose the men they sent to advise us." The measure which eventually took shape was the Indian Councils Act of 1892 which increased the number of members of the legislative councils, and what is more, enabled rules to be made regulating the course of nomination of non-official members in a manner which contained the first faint beginnings of the application of the representative principle. The rights of indirect elections to the Councils and of asking questions and discussing, but only discussing, and not voting or moving, resolutions on the financial statement, were allowed.

The key to the policy underlying these reforms of 1892 was rightly stated by Lord Lansdowne in the following words—"We hope, however, that we have succeeded in giving to our proposal a form sufficiently definite to secure a satisfactory advance in the representation of the people in our Legislative Councils, and to give effect to the principle of selection as far as possible on the advice of such sections of the community as are likely to be capable of assisting us in that manner." Mr. (now Earl) Curzon, the then official spokesman of Government said that "it would be in the power of the Viceroy to invite representative bodies in India to elect or select or delegate representatives of themselves and their opinions to

## INTRODUCTION.

be nominated to those houses and thus by slow degrees, by tentative measures—and in a matter like this measures cannot be otherwise than tentative—we might perhaps approximate in some-way to the ideal."

The Act of 1892 was, in short, a most cautious but deliberate attempt at introducing the elective element into the government of India. As the late Mr. Gladstone pointed out – "the great question we have before us – the question of real and profound interest—is the question of the introduction of the elective element into the government of India. While the language of the Bill cannot be said to embody the elective principle, it is very peculiar language, unless it is intended to pave the way for the adoption of that principle." As a matter of fact the working of the Act of 1892 did pave the way for the adoption of that principle in the scheme of political reforms associated with the names of Viscount Morley and the late Earl of Minto. "The Bill of 1892", said Lord Morley in the course of his speech on the second reading of the Indian Councils Bill of 1909, "admittedly contained the elective principle and now this Bill extends that principle."

The Morley-Minto Act of 1909 still further enlarged the Legislative Councils both of the Governor-General and of the provinces. It also introduced for the first time the method of election, though not yet direct election, as the means of constituting a portion of the non-official members, and thus helped to "quicken into life the seed of representative institutions sown in 1861". Further it dispensed with official majorities in the Provincial Legislative Councils and gave them power to move resolutions upon matters of general public interest, and also upon the Budget and to ask supplementary questions: the resolutions however, were to be only advisory in character which the executive might adopt or reject at its discretion.

Here we may pause for a moment to point out how the Morley-Minto changes carried constitutional development a step further. "They admitted the need for increased representation, while re-iterating the impossibility of basing it generally on a direct or general franchise. They admitted the desirability of generally securing non-official approval to the Government legislation, though they trusted in an emergency to the support of nominated members, to the division

of interests between different classes of elected members, and in the last resort to over-riding legislation in the Indian Legislative Council, where an official majority was retained. Frankly abandoning the old conception of the councils as a mere legislative committee of the Government, they did much to make them serve the purpose of an inquest into the doings of Government, by conceding the very important rights of discussing administrative matters and of cross-examining Government on its replies to questions. Lord Morley's disclaimer—"If it could be said that this chapter of reforms led directly or indirectly to the establishment of a parliamentary system in India, I for one, would have nothing at all to do with it"—is no doubt explicable when we remember his stout insistence on the sovereignty of the British Parliament, and his acceptance of the decided advice of Lord Minto's Government, backed by the experience of every Indian administrator of eminence, that anything beyond very limited constituencies and indirect franchises was unthinkable in India. He took the constitutional view that no relaxation of the control exercised by the British electorate was possible, until an Indian electorate, which was not then in sight, had arisen to take the burden from its shoulders." (M. C. R. para 79.) Nevertheless these features of Lord Morley's Reforms did constitute a decided step forward on the road leading to the goal of Responsible Government.

"But the reforms of 1909 afforded no answer, and could afford no answer to India's political problems. Narrow franchises and indirect elections failed to encourage in members a sense of responsibility to the people generally, and made it impossible, except in special constituencies, for those who had votes to use them with perception and effect. Moreover, the responsibility for the administration remained undivided : with the result that while governments found themselves far more exposed to questions and criticism than hitherto,—questions and criticism uninformed by a real sense of responsibility, such as comes from the prospect of having to assume office in turn. The conception of a responsible executive, wholly or partially amenable to the elected councils, was not admitted. Power remained with the Government and the councils were left with no functions but criticism. \* \* \* Responsibility which is the savour of popular

## INTRODUCTION

Government was wholly lacking in those Councils : it was felt that with this responsibility they must be invested ; they must have real work to do ; and they must have real people to call them to account for their doing of it." (M. C. R. para 81).

Looked at from another point of view it can be shown that even if the Declaration of August, 1917, had not been made, important constitutional changes were bound to come. This point was made clear by the Earl of Selborne—the illustrious Chairman of the Parliamentary Select Committee—in the course of his speech on the second reading of the Government of India Bill, 1919. He said—"The Government of India was originally formed on the most simple lines possible. Its tasks were to preserve order, to administer justice, and to collect the revenue. It really was an absolutely ideal Government after the conception of government of the Manchester School. Now, on to a Government formed under those ideas are gradually loaded all those complexities which this post-Victorian generation associates with the duties of government. This Government of India, so formed, is supposed to fulfil all those multifarious functions of the state which modern opinion considers appropriate to the state, and it has to do this at a moment when it is for the first time subjected to an incessant fire of acute criticism—a criticism never ceasing in India, and brought over here and directed to the attention of the Press and of Parliament." The result of all this is that the centralisation of Government had been constantly increasing and "the load had become too great for the machine." The moral Lord Selborne drew from these impressions was "that the time had come when provincial autonomy or something like autonomy, was absolutely necessary, that an immense devolution of responsibility from the Government of India and from the Secretary of State to the Provinces was absolutely essential." It was not difficult for him to show that such devolution would be possible only if responsibility to the people could be substituted for responsibility to the Government of India or to Secretary of State for India.

Then, again, it should not be forgotten, as Lord Sinha pointed out in his great speech in the House of Lords, that as a result of the war there had been a great advance in the *status* of India. She had been privileged through her own repre-

sentatives to take an equal part with the British Dominions Overseas in the Imperial War Conference and also in the Peace Conference in Paris, and she had been admitted as an original member of the League of Nations. "These experiences had further quickened her sense of national unity and development, a sense which had been steadily fostered for many years by common allegiance to the same beloved Sovereign, by being amenable to one code of laws, by being taxed by one authority, by being influenced for weal or woe by one system of administration, and by being urged by like impulse to secure like rights and to be relieved of like burdens. This growing sense of nationality sought expression in the more liberal political institutions which have been established in other parts of the British Empire."

## III.

### THE CONSTITUTIONAL REFORMS OF 1919.

Let us now take a brief survey of the measures of political reform introduced by the Government of India Act, 1919, which give effect, with certain modifications to the scheme of constitutional reforms recommended in the Montagu-Chelmsford Report as supplemented by the Report of the Southborough Committees. It provides for the taking of the first "substantial steps" towards the goal of British policy in India as defined in the Announcement made in the House of Commons on the 20th August, 1917. The first part of the Preamble to the Act quotes from that Announcement the terms in which the goal of British policy was defined *viz.*, "the progressive realisation of responsible government in India as an integral part of the British Empire."

As stated in the Preamble, the Act provides for two stages which are essential to an advance towards that goal:—

- (1) The gradual development of self-governing institutions in India.
- (2) The giving to the Provinces, concurrently with such development, the largest measure of independence in Provincial matters of the Government of India which is compatible with the due discharge by the latter of its own responsibilities.

The second paragraph of the Preamble, which refers to giving increased independence to the Provinces, embodies the policy laid down in the second formula of the M. C. Report. (para. 189). "The Provinces are the domain in which the earlier steps towards the progressive realisation of responsible government should be taken. Some measure of responsibility should be given at once, and our aim is to give complete responsibility as soon as conditions permit. This involves at once giving the Provinces the largest measure of independence, legislative, administrative, and financial, of the Government of India, which is compatible with the due discharge by the latter of its own responsibilities." This formula which thus links together the two questions of provincial independence of the Government of India, and the growth of responsible government in the Provinces, is based on a recognition of the principle laid down in an earlier paragraph (para. 188) that "in proportion as control by an electorate is admitted, control by superior authority must be simultaneously relaxed."

To understand the full significance of these changes, one must not merely go through the Act of 1919, but through the whole Consolidated Government of India Act with the amendments and additions made by the amending Acts of 1916 and 1919 (as printed in Part I of this book). We shall not deal here with the details of the multifarious changes which are to be found in their proper place in the notes under the different sections; but we shall try here to summarise the broader aspects of the measures of constitutional reform inaugurated by the Reforms Act of 1919:—

(I) The salary of the Secretary of State for India, and a part of the other expenses of the India Office establishment are being paid out of moneys provided by Parliament instead of out of the revenues of India, as heretofore.

(II) The Secretary of State in Council has been empowered to make rules regulating and restricting the exercise of the general powers of control vested in the Secretary of State and in the Secretary of State in Council under the provisions of the Act, so that, as self-governing institutions develop in India, control from above, for the exercise of which the Secretary of State is answerable to Parliament, may

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(I) The salary of the Secretary of State for India, and a part of the other expenses of the India Office establishment are being paid out of moneys provided by Parliament instead of out of the revenues of India, as heretofore.

(II) The Secretary of State in Council has been empowered to make rules regulating and restricting the exercise of the general powers of control vested in the Secretary of State and in the Secretary of State in Council under the provisions of the Act, so that, as self-governing institutions develop in India, control from above, for the exercise of which the Secretary of State is answerable to Parliament, may

be gradually relaxed in accordance with a declared policy formulated in rules.

(III) In pursuance of the liberal policy underlying the Reforms an Indian, in the person of H. E. Lord Sinha, was, for the first time, appointed Parliamentary Under-Secretary of State for India, and the number of Indian members in the Council of India and their salary were increased.

(IV) Provision has been made for the creation by Order in Council of a High Commissioner for India in the United Kingdom. A Government of India *communiqué* dated Simla, the 20th of September, 1920 and an Order in Council (*printed as Appendix D to Part I of this book*) give us the details about this high functionary.

Lord Crewe's Committee on the Home Administration of Indian Affairs proposed, and the proposal was endorsed by the Parliamentary Joint Select Committee, that the Government of India should have a special representative of high status in London who would eventually take over all work hitherto done by the India Office for the Indian Government which is of an agency as opposed to a political and administrative character i.e., in which the India Office ordinarily carries out the wishes of the Indian Government without question.

The further developments of the functions and powers of the High Commissioner and his gradual approximation to the position of a High Commissioner to the Self-Governing Dominions will naturally depend upon the changes which may ensue in the relations of the Government of India to the Secretary of State and Parliament.

It has now been decided by the Government of India and His Majesty's Government that the time has come for making a beginning in the direction described above by the appointment of a High Commissioner and that appointment has been created and its general functions and status defined by an Order in Council approved by His Imperial Majesty the King. (*See Appendix D to Part I of this book.*)

The High Commissioner who will be subordinate to the Government of India will at the outset take up the control of the large Stores Department of the India Office and the accounts section connected therewith and the Indian students branch. He will also supervise the work of the Indian

Trade Commissioner already located in the City. When these arrangements are in satisfactory working order the Secretary of State for India will in conjunction with the Government of India decide what further work of an agency character, for instance, such matters as the payment of leave and pension allowances, can be transferred from the India Office to the High Commissioner and from what date.

The Order in Council prescribes that the appointment of the High Commissionership shall be made by the Governor-General of India in Council with the approval of the Secretary of State for India in Council and the Government of India have nominated as the first holder of the appointment Sir William Meyer, G. C. I. E., K. C. S. I. formerly a member of the Governor-General's executive council. This nomination has been approved by the Secretary of State for India. A Secretary will be attached to the High Commissioner and the first holder of the appointment will be an Indian gentleman, namely, Mr. J. W. Bhore, O. B. E., I. C. S.. At the outset the officers and clerks will be mainly those hitherto employed in the India Office on the work now to be taken over but as time goes on the High Commissioner will fill up vacancies and provide for new posts which expansion of work may involve by independent recruitment under orders of the Government of India.

The High Commissioner entered on his duties on the 1st October last.

V. Provision has been made for—

- (a) the appointment of a Public Services Commission which is to deal with matters affecting recruitment and control of the public services in India under rules made by the Secretary of State in Council ;
- (b) the appointment of an independent Auditor-General with a statutory position ;
- (c) the appointment of the first of the Statutory Commissions which are to survey periodically the political situation in India and to investigate the working of the changes introduced by the Act of 1919, and to advise as to the political future of British India.

This periodical survey of conditions in India by Commissions appointed with the approval of Parliament is a vital element in the scheme for the gradual transfer of responsibility outlined in the M. C. Report, and it has therefore been considered essential to make definite provision in the Act for the appointment of the first Commissioners ten years from the date of the passing of the Act (i. e., December, 1929) so that the prospect of their appointment may be kept steadily in view and the enquiry which they are to conduct may be recognised from the inception of the Reforms as an important factor in the process of future development.

VI. There is now no limit to the number of members of the Governor-General's Executive Council; and only recently an eighth member for Industries and Munitions has been added to it; and the creation of a new Department of Ways and Communications (combining the various duties of Departments relating to Internal Transport and Communications embracing Railways, Tramways, Internal Navigation, Ports and Docks, Post and Telegraphs, Aviation and Road Traffic including Motor legislation) is foreshadowed in the recent Resolution of the Government of India on the Report of the Secretariat Procedure Committee (*vide Gazette of India, September 18, 1920.*) The rules regarding the qualifications of members of the Governor-General's Executive Council have been made more elastic: a High Court pleader of ten years' standing can now become the Law Member of the Council: at present three out of eight members are Indians.

VII. Considerable changes of a far-reaching character have been effected in the constitution of the Indian Legislature which now consists of the Governor-General and two Houses—the Council of State and the Legislative Assembly, both of them consisting of members directly representing their respective constituencies, the latter being a body substantially larger, and of a more representative character than, the uni-cameral Indian Legislative Council; the Indian Legislature has thus become a truly bi-cameral legislature and has been brought into a line with the Dominion Legislatures. The Council of State has been constituted from the commencement as a true Second Chamber: it consists of 60 members of whom not more than twenty may be officials. The Legislative Assembly, consists of 144 members of

whom 103 are elected members, 26 are nominated officials and 15 are nominated non-officials. The law fixes the life of the Council of State at five years and that of the Legislative Assembly at three years, but provides that the Governor-General may dissolve either Chamber at any time, and that he may in special circumstances also extend the life of either Chamber. The rules of business to be observed in these two Chambers of the Indian Legislature are set forth in Appendix A to Part I of this book.

Under the new *regime* there is likely to arise a new *provincial patriotism*, a healthy emulation among the provinces to outdo one another in constructive legislation and improved administration ; but there is also the probable risk of the nascent *Indian nationalism* being supplanted by a more intense and vigorous *provincial patriotism*, unless the provinces send their best representatives to the Indian Legislature so as to make it the centre and citadel of the unity of Indian national life : it is the Indian Legislature alone—which, by its representative character, by its unprejudiced and wide outlook, and by its sober and dignified judgment on important issues—can and should proclaim the unity and solidarity of the Indian national life and prove to be an exemplar to all the local legislatures in India. The electors to the Indian Legislature have a great responsibility in this matter : they should bestow their franchise on the best men that the provinces can spare : it may happen, however, that some of the best provincial representatives might seek election to the local legislatures rather than to the Indian legislature specially because the local legislatures offer greater opportunities for the exercise of power and responsibility and have thus all the glamour of a parliamentary career. The electors should however, see that some of the best men in the provinces remain available for representing them in either House of the Indian Legislature.

#### IV.

### THE NEW SYSTEM OF PROVINCIAL GOVERNMENTS

VIII. Next we come to the Provinces where the chief constitutional changes have been made : those changes may be briefly described under the following heads :—

- A. Division of functions between the Provinces and the Government of India and relations between the Central and Provincial Government.
- B. Constitution of a new form of Executive Government in the Provinces and division of functions between the two parts of the new Provincial Government.
- C. Constitution and powers of Provincial Legislatures.

*A. Division of functions between the Provinces and the Government of India and relations between the Central and Provincial Governments :*

The Act of 1919 provides for the making of rules for the purpose of classifying subjects in relation to the functions of Government as Central and Provincial subjects. This classification, which is on the lines proposed in the Functions Report, is the basis of the division of functions between the Central Government and the Provincial Governments. Authority in respect of Provincial subjects is to be devolved by rules to Provincial Governments and rules also provide for the necessary financial arrangements between the Central and Provincial Governments, under which certain sources of revenue have been definitely allocated to the Provinces in accordance with the proposals contained in the M. C. Report (paras. 200-203) and the Meston Committee's Report, and the Provincial Governments are required to contribute to the Central Government certain annual sums which are a first charge on their revenues.

Provincial subjects represent the special sphere of activity allotted to the Provinces, but it is contemplated that, apart from the administration of Provincial subjects, the Provincial Governments will continue to discharge in their own Provinces many duties on behalf of the Central Government in relation to Central subjects, *i.e.*, subjects which are to remain under the full control of the Central Government, such as the administration of customs and shipping laws, and the collection of income-tax. The distinction between these agency functions of the Provincial Governments, and their functions in relation to Provincial subjects is stated in the Functions Report (para 12). In the case of Provincial subjects authority is, with certain qualifications, definitely

## INTRODUCTION.

committed to Provincial Governments ; in the case of Central subjects their agency is employed merely as a matter of convenience, and it is, therefore, always open to the Central Government to cease to employ such agency, and itself to undertake the entire work of administration through its own officials. The position with regard to the "agency functions" of Provincial Governments is defined by rules providing for use by the Government of India of the agency of Local Governments in relation to Central subjects in so far as it may be found convenient to use such agency.

With regard to the control to be exercised by the Governor-General in Council over the administration of Provincial subjects, it is provided that in relation to transferred subjects *i.e.*, those Provincial subjects which are transferred to the charge of Ministers, the general powers of control vested in the Governor-General in Council shall be exercised only for the purposes specified in rules (Functions Report, paras 16, 17 and 22). The purposes for which it is proposed in the Functions Report that the Government of India shall retain power to exercise control in relation to transferred subjects are two, namely :—(1) to safeguard the administration of all-India (or Central) subjects : (2) to decide questions arising between two or more Provinces, failing agreement between the Provinces concerned. The Act of 1919 contains no express provision as to the control of the Governor-General in Council over the Provincial Governments in relation to reserved subjects, that is, those Provincial subjects which remain in charge of the official part of the Government (the "Governor in Council"), but sec.19 A of the Consolidated Act enables the Secretary of State in Council by rules to regulate and restrict the exercise of the hitherto existing wide powers of control vested in the Secretary of State or the Secretary of State in Council "in such manner as may appear necessary or expedient in order to give effect to the purposes of this Act" ; this section will therefore incidentally cover the making of rules regulating the control to be exercised in future by the Government of India over Provincial Governments in relation to reserved subjects (Functions Report, paras 18-22). A distinction must be drawn between the administrative control exercised by the Governor-General in Council, and the control of Provincial legislation vested in the Governor-General whose assent is required to Provincial Bills, and whose previous sanction is required to

## THE INDIAN CONSTITUTION.

certain classes of Provincial Bills. This question of control over Provincial legislation is referred to below.

It is important to note that, though the Act provides for a division of functions between the Central Government and Provincial Governments similar to that which is to be found in Federal Constitutions, it is not contemplated that questions as to the dividing line between the spheres of the Central and Provincial authorities shall be the subject of legal decision in the Courts (M. C. Report paras 212, 239). Provision is made for the making of rules providing for the settlement of doubts as to whether "any matter does or does not belong to a Provincial subject," and the intention is that the Rules to be framed shall provide for such doubts being decided by administrative authority, i. e., by the Governor-General in Council subject to the control of the Secretary of State whose duty it will be to check any tendency on the part of the Central Government to take too restrictive a view as to the subjects included in the Provincial sphere.

### *B. Constitution of a new form of Executive Government in the Provinces and division of functions between the two parts of the new Provincial Governments :*

The Announcement of 20th August 1917 was based on the principle that the goal of responsible government is to be reached by a gradual transfer of responsibility to representatives of the people. A new type of Executive Government has been created for the Provinces for the purpose of enabling effect to be given to this plan of gradual transfer of responsibility. The new Provincial Governments are of a composite character, and contain both an official and a non-official or popular, element. On the official side they are modelled on the hitherto existing Governments of the Presidencies which have had "Council Government."

7- Under this system the Government is carried on by a Governor assisted by an Executive Council, and official acts are performed in the name of the "Governor-in-Council." On the popular side the new Governments consist of the Governor and of Ministers who are elected members of the Legislative Council appointed by the Governor. For the purpose of allotting to each section of this dual government



## INTRODUCTION.

its own sphere of duty the work of the Provincial Government has been divided into two parts : certain subjects, called "transferred subjects," are to be administered by the Governor acting with the Minister in charge of the subject, while other subjects, called "reserved subjects," remain in charge of the Governor in Council. Each side thus has its own share in the conduct of the government of the Province, and the respective shares are defined in such a way as to fix on each section responsibility for its own work, while co-ordination is to be achieved by the influence of the Governor, who will be associated with both sections of the Government, and will have power to summon meetings of his Executive Council and his Ministers for the purpose of joint deliberation whenever he sees fit to do so. Future progress will be made by the transfer of further portions of the field of administration from the official to the non-official section of the Government after periodical surveys of existing conditions by Statutory Commissions appointed by Parliament. These are the essential features of the plan on which, according to the proposals of the M. C. Report, the development of responsible government in the Provinces is to depend. The criticisms to which this plan has been subjected are reviewed in the Government of India's First Reforms Despatch of the 5th March, 1919, which also refers to an alternative scheme for a unitary government which was put forward by the heads of five Provinces. This alternative scheme provided for an Executive Council which was to consist of an equal number of officials and non-officials, the latter being selected from elected members of the Legislative Council ; there was to be no division of subjects, and no distinction within the council between the functions of official and non-official members. The Government of India have made a careful examination of this alternative scheme. They point out that it admittedly does not enable responsibility for any act of government to be fixed on any member of the Executive, and that, while claiming to be a unitary form of government, it is open to the objection that in fact it involves a disguised dualism, which, owing to the different mandates of the official and non-official members, will, in the absence of any division of functions, almost inevitably involve them in conflict over the whole range of their duties. In the Minute by H. E. Lord Chelmsford appended to the Despatch, stress is laid on the failure of this alternative

scheme to give effect to the basic principle of the gradual transfer of responsibility. Reference should be made to the Despatch and the accompanying papers for a full statement of the points in issue. The position may be summarised as follows :—

While the scheme for dyarchy or a dualised form of Government in the provinces had been a target for much criticism, no alternative plan had been put forward which was consistent with the Announcement of the 20th August in providing for the *gradual* transfer of responsibility, and thus enabling advance to be made step by step to the ultimate goal. The alternative plans suggested which attempted to eliminate dualism were subject to two fatal defects :— 1) at the outset they gave no such responsibility to the non-official element in the Government as would be recognisable by the Councils or their electorates, and no certainty of control to the Councils over any functions of Government ; and (2) they provided no means whereby such responsibility and control could be ultimately secured except by a *sudden change* from official to popular government which would take effect simultaneously with respect to all provincial functions. The scheme of the M. C. Report embodied in the Act does give immediate responsibility to the Ministers who represent the popular element in the Legislative Councils in respect of some departments of the administration, though as long as there is a division of functions between an official and a non-official section, such responsibility cannot be complete ; at the same time by bringing the Ministers into touch, both at joint meetings and in the discharge of their own duties, with the work of the reserved departments, it gradually familiarises them with the needs of those departments and considerations affecting their administration, and thus prepares the way for the assumption by Ministers of further responsibility by degrees as additional subjects are transferred, until the ultimate goal of complete responsibility has been attained.

*Eight Provinces to which the new form of Government will apply* :—Sec. 3 of the Act of 1919 provides that the following shall be the Provinces to which the new form of provincial government, as outlined above, is to apply :—

Bengal, Madras, Bombay ... The three Presidencies,  
hitherto governed by  
Governors in Council

## INTRODUCTION.

(i.e. by Governors assisted by Executive Councils).

Bihar and Orissa	... ..	Hitherto governed by a Lieutenant-Governor in Council (i.e., a Lieutenant-Governor assisted by an Executive Council.) Hitherto
United Provinces, Punjab	... ..	to governed by Lieutenant-Governors. Hitherto
Central Provinces, Assam	... ..	governed by Chief Commissioners.

These eight Provinces, which are referred to as "Governors' Provinces," are governed under the dual system of Government. Each Province has a Governor, who is advised in relation to some of the functions of Government (those relating to reserved subjects) by an Executive Council, and in relation to other functions (those relating to transferred subjects) by Ministers.

The new form of provincial government is not applied to Burma, which, for reasons indicated in the M. C. Report (para. 198), requires separate treatment. Burma will, however, come within the scope of the devolution provisions of the Act except in so far as such provisions are dependent on the institution of the new form of provincial government.

*Constitution of Executive Councils.*—The Executive Councils have been constituted similarly to the hitherto existing Executive Councils in the Presidencies. Section 47 of the Act of 1915 provided that members of a Governor's Executive Council were to be appointed by His Majesty by Warrant, and were to be of such number, not exceeding four, as the Secretary of State in Council directed and that two at least of such members must be "persons who at the time of their appointment had been for at least 12 years in the service of the Crown in India." Under the hitherto existing system the Executive Councils in the three Presidencies consisted normally of three members, of whom two were members of the Indian Civil Service and the third was an Indian. Sec. 5 of the Act of 1919 provides that the requirement as to previous service under the Crown in

India is henceforth to apply only to one of the members of a Governor's Executive Council, and also repeals a provision, which has become obsolete, that the Commander-in-Chief, while resident in the capital of a Presidency, is temporarily added to the Executive Council of that Presidency. The maximum number of members of an Executive Council remains at the hitherto existing figure, four. The M. C. Report proposed that under the new system the Governor's Executive Council should consist of two members only (para. 218), of whom one was in practice to be a European qualified by long official experience and the other an Indian. It was also proposed (para. 220) that the Governor should be entitled to appoint one or two additional members to the Council as Members without portfolio for the purpose of consultation and advice. This proposal met with much criticism, and, in view of the difficulties which its adoption involved (*G. I First Reforms Despatch para. 37*), had been abandoned. But, as the maximum number of four remains, it will be open to the Secretary of State to sanction larger Councils than those proposed in the M. C. Report, and there will be nothing to debar him from advising the appointment of more than one official member if he sees fit to do so. It has been considered undesirable to include in the Act any provision for racial qualification, and the suggestion made by the Government of India that one seat should be reserved by statute for an Indian has, therefore, not been adopted; but it is contemplated that in any event Executive Councils will continue to include at least one Indian member, and that, if a second European member is added, there will also be a second Indian member.

*Ministers.*—Provision is made by sec. 52 of the Consolidated Act for the appointment of Ministers to administer transferred subjects. Such Ministers must not be officials, and will hold office during the Governor's pleasure, and not for the lifetime of the Legislative Council, as originally proposed in the M. C. Report. This alteration, coupled with the power which the Councils have over the supply for transferred subjects, involves making the Ministers from the start directly responsible to the Legislative Councils. Ministers' salaries will be voted by the Legislative Councils. A Minister must be, at the time of appointment, or become within six months after appointment, an elected member of the

local legislature. This clause is modelled on corresponding provisions contained in Dominion constitutions (Australian Commonwealth Act, 1915, 5 & 6 Geo. V, c. 61, sec. 64, South Africa Act, 1909, 9 Edw. VII, c. 9, sec. 14). The following rule is laid down for the purpose of governing the relations between the Governor and a Minister :—"In relation to a transferred subject the Governor shall be guided by the advice of his Ministers unless, he sees sufficient cause to dissent from their opinion in which case he may require action to be taken otherwise than in accordance with that advice." This rule is in accordance with the proposals contained in para. 219 of the M. C. Report. Provision may be made by rules for the temporary administration of a transferred subject in cases of emergency when, owing to a vacancy, there is no Minister in charge of the subject. (Functions Report, 60-63). Some provision for such cases is required in order to enable necessary action to be taken in a transferred department at a time of political crisis, and to guard against the possibility of the work of administration being brought to a standstill.

*Division of Provincial subjects.*—Sec. 45A of the Consolidated Act provides for the making of rules for the transfer of some Provincial subjects to the administration of the Governor acting with the Minister in charge of the subjects. Provincial subjects other than transferred subjects, which are referred to as "reserved subjects," remain in charge of the Governor in Council. It should be noted that the Governor in Council, in addition to being responsible for reserved subjects, is also normally responsible for the work which falls upon a local Government as the Agent of the Governor-General in Council in relation to Central subjects. Rules may also be made for the settlement of doubts as to whether any matter does or does not belong to a transferred subject, and for the treatment of matters which affect both a transferred subject and a subject which is not transferred. It is contemplated that under this provision the Governor will be empowered himself to settle any question of disputed jurisdiction as between the two sections of the Provincial Government in accordance with the proposal of the M. C. Report (para. 239). As for the treatment of matters which affect both transferred subjects and subjects which are not transferred, reference may be made to paragraphs

60-63 of the Functions Report, in which it is proposed that the Governor shall in certain cases submit questions for joint consideration by both sections of his Government, and shall, in case of disagreement, himself be responsible for making the decision. Where a subject has been transferred it is provided that the transfer cannot be revoked or suspended except with the sanction of the Secretary of State in Council.

*Financial arrangements.*—Rules may also be made for the allocation of provincial funds for the purpose of the administration of transferred subjects. The proposals contained in the M. C. Report (paras. 255-257) are to the effect that the revenue from reserved and transferred subjects shall be thrown into a common pool from which the two halves of the Government will draw funds for their respective requirements. The amount which each is to draw is to be settled annually by the Executive Government as a whole, the Governor being the deciding authority where the Executive Council and Ministers fail to agree.

"The first charge on Provincial revenues will be the contribution to the Government of India ; and, after that the supply for the reserved subjects will have priority. The allocation of supply for the transferred subjects will be decided by the Ministers. If the revenue is insufficient for their needs, the question of new taxation will be decided by the Governor and the Ministers" (M. C. Report, para. 256).

These proposals were criticised by the Government of India in its Despatch of 5th March, 1919 in which a scheme for what is called the "separate purse" system under which each section of the Provincial Government will have a separate purse, instead of both sections drawing on a joint purse, was put forward (Despatch, paras. 64-73).

The terms in which the power of making rules as to allocation of provincial funds is proposed to be conferred leave open the question as to whether provincial finance is to be on the basis of one joint purse or of two separate purses.

### *C. Constitution and powers of Provincial Legislatures.*

*Changes in the constitution of Provincial Legislative Councils.*—The hitherto existing provisions with regard to the composition of Provincial Legislative Councils were contained in sec-

tions 73 to 76 of the Act of 1915, these provisions did not fix the proportion of elected members, but elected and nominated members were dealt with together, and it was laid down that of the total membership of the Councils at least half in the case of the Presidencies and at least one-third in the case of other Provinces should be non-official members. Sec. 7 of the Act of 1919 and the First Schedule to it provide for the composition of the enlarged Legislative Councils.

The aggregate number of members of any Council may be increased by rule provided that the proportions of different classes of members are maintained so that at least 70 per cent. of the members of any Council must be elected members, and not more than 20 per cent. may be official members. All provisions with regard to elections, including qualifications of voters, are left to be made by rule. Provision has also been made for prorogation and other matters affecting meetings of a Council and for enabling a Governor to dissolve his Council, but requiring the Governor, where a Council has been dissolved, to appoint a date for its next session not more than six months from the date of dissolution.

*Legislative powers of Provincial Legislative Councils.*—The legislative powers of the new Councils are dealt with in sec. 10 of the Act of 1919. This section represents sec. 79 of the Act of 1915 as revised on the lines recommended in the Functions Report (paras, 28-35). One important object of the revision has been to limit the number of cases in which previous sanction of the Governor-General is required to Provincial Bills, and at the same time to make the statutory list of such cases complete, so as to avoid continuance of the hitherto prevalent practice whereby Bills not included in such list had to be submitted for previous sanction under "executive order." It will be observed that the section confers general powers of legislation on the local legislature of a province subject to the requirement of the Governor-General's previous sanction in the case of certain classes of Provincial Bills. Absence of previous sanction cannot, however, be made a ground for attacking the validity of a Bill which has received the assent of the Governor-General. This arrangement renders possible a distribution of legislative power between the Indian Legislature and the Provincial Legislatures without subjecting the validity of Provincial Acts to challenge in the Courts on the ground that such Acts involve an

invasion of the sphere of the Indian Legislature. As regards the Indian Legislature no formal limitation has been made of the general powers of legislation conferred by sec. 65 of the Act of 1915, but it is contemplated that the Indian Legislature will abstain from legislating on Provincial subjects, except where those subjects are declared by the Rules of Classification to be subject to Indian Legislation (Functions Report 33).

*Business and procedure in Legislative Councils.*—Sec. 11 of the Act of 1919 deals with business and procedure in a Governor's Legislative Council, *i.e.*, a Legislative Council in a Governor's province. In addition to providing that there shall be freedom of speech in these Councils, so that members shall not be liable for proceedings in respect of speeches made in the Councils, and enabling rules and standing orders to be made regulating the course of business, the section defines the powers of financial control to be exercised by the Councils.

The Local Governments are henceforth empowered to submit their annual appropriation proposals for the Councils' assent in the form of demands for grants. It is contemplated that the provincial estimates comprising the expenditure required both for reserved and transferred subjects will be presented as a whole, but that the Governor in Council will be responsible for the estimates in so far as they relate to reserved subjects, and the Governor and Ministers in so far as they relate to transferred subjects. In the case of resolutions relating to a reserved subject, if the Council refuses its assent, the Governor in Council will, nevertheless, have power to incur the expenditure involved if the Governor certifies that such expenditure is essential to the discharge of his responsibility for the subject concerned. In the case of resolutions relating to transferred subjects the assent of the Council will be necessary, but the Governor is entrusted with power, in cases of emergency, to authorise expenditure which is, in his opinion, necessary for the safety or tranquillity of the Province, or for the carrying on of the administration of any department. By the exercise of this reserve power the Governor will be able to provide funds for any unforeseen emergency, and also in the last resort to prevent the temporary closing down of a transferred department owing to refusal of supplies. Provision is made for declaring by rules that



## INTRODUCTION.

certain expenditure, which includes the Provincial contributions to the Central Government, is a permanent charge on the Provincial revenues, and Local Governments will not be required to include proposals for such expenditure in the resolutions submitted to the Councils. In accordance with the principle of British parliamentary practice, which requires that every grant of money for the public service shall be based on the request or recommendation of the Crown, and with the precedents contained in Dominion constitutions (Austrian Commonwealth Act, 1915, section 56, South Africa Act 1909, section 62), it is laid down that no proposal for the appropriation of the Provincial revenues, or for the increase of any expenditure proposed to be authorised by a resolution, shall be made except on the recommendation of the Governor. This provision will debar private members from moving amendments which would have the effect of increasing the amount of any proposed appropriation. The Rules of Business to be observed in Governor's Legislative Councils are set forth in Appendix B to Part I. of this book.

## V.

### SOME SPECIAL FEATURES OF THE REFORMS.

IX. The members of both the Indian and Provincial legislatures have been granted the privilege of freedom of speech which is a valued privilege in the legislature of every civilized country. The meaning of the phrase "freedom of speech" is that for any speech or debate in the legislature its members are not to be questioned in any other place. This means that only the House itself can call a member to account for what he says in the House, and that he is not subject to any prosecution for libel or slander before the Courts for what he says in the House to which he belongs or in its committees, or for the official publication of what he says. As Prof. Burgess says—"The fullest and most complete ventilation of every plan, object and purpose is necessary to wise and beneficial legislation. This could never be secured if the members should be held under the restraints imposed by the law of slander and libel upon private character. There is no doubt that this privilege may be grossly abused, since every word used in debate, and frequently something more is now

reported to the public ; but the danger to the general welfare from its curtailment is far greater than to individuals from its exercise."

X. The vexed question of Women's Suffrage has been left to the local legislatures for decision. During the course of the debates on the Government of India Bill in the House of Commons an amendment was moved that, in framing rules regarding elections to Governors' Legislative Councils, there should be no discrimination of sex as regards the right to vote. In moving this amendment Major Hills, M. P. made the following, among other, remarks—

"In the minds of a good many Members, I think, there must be a feeling of pride that we should ask them to grant Indian women this gift of the vote which European women have won after a very long struggle. In view of the long constitutional history of our country and our long training in representative government, it seems, perhaps, strange to some members that Indian women should at the very beginning of this great experiment be given the vote, whereas English and Scottish women have had to wait many centuries to get it \* \* \* So far as Indian opinion goes, it is quite unanimously in favour of the grant of the vote to women \* \* \* I come to what I believe is the real objection in the minds of most Members to this proposal. That is this idea—that the franchise is totally foreign and repugnant to the social and religious feelings of the community. On that, again, I would ask the Committee to observe one or two things. In the first place, we have made very great inroads by this Bill on the social structure of India. We have enfranchised the lower castes \* \* \* Surely what we have done in enfranchising the men of the lower castes is a far bigger shock to conservative opinion in India than the enfranchisement of women of their own caste? \* \* \* Any one who looks upon pictures of Indian history will find that he frequently comes across gallant figures—women leading their armies in battle, ruling their countries wisely and presiding over their councils in peace. \* \* \* In the Report of the Joint Committee it is laid down that this question goes so deeply into the social life of India that we sitting here ought not to decide it, but should leave it to the Councils when they are formed. \* \* \* I would far rather it were settled here than it should be made a weapon in party warfare, because it

is a very difficult question." Major Hills's motion was, however, defeated by an overwhelming majority of votes. In accordance with the recommendation of the Joint Select Committee, therefore, the question has been left to be settled by resolution by the newly elected legislative councils in the several Governors' Provinces. They have instructed the Government of India to make rules, so that if a Legislative Council so voted, women might be placed upon the register of voters in that province. "It seems to them (the Joint Select Committee) to go deep into the social system and susceptibilities of India, and therefore, to be a question which can only, with any prudence, be settled in accordance with the wishes of Indians themselves as constitutionally expressed."

XI. The provision for the appointment of Council Secretaries from among the members of the Indian Legislative Assembly and of the Governors' Legislative Councils marks a new departure in Indian constitutional practice: it allows of the selection of members of the legislature who will be able to undertake duties similar to those of the Parliamentary Under-Secretaries in Great Britain. The Governor-General may, at his discretion, appoint, from among members—elected or nominated, *official or non-official*—of the Legislative Assembly, Council Secretaries whose salaries are to be voted by the Indian Legislature, who are to hold office during the Governor-General's pleasure and discharge such duties in assisting the members of his Executive Council as he may assign to them. In the case of the Governors' Legislative Councils the Council Secretaries are to be chosen from among the *non-official* members—elected or nominated—and they are to be appointed to assist both executive councillors and ministers: there is no statutory limit to the number of such Council Secretaries; apparently, however, one Council Secretary will be attached to each councillor and minister. Their salaries are to be voted by the legislature and they will, therefore, be, like the ministers, responsible to the Legislative Council.

XII. Lastly, we should refer to the "certifying power" of the Governor-General and the Governors. Both the Governor-General and the Governors have been given the negative "power of certificate" to prevent the passage of a law affecting the safety or tranquillity of British India or of the provinces or any part thereof. They have also been given the *positive*

power of securing the passage of any law which they deem essential for the safety, tranquillity or interests of British India, the Provinces or any part thereof. So long as the Governor-General in Council or the Governor in Council remains responsible to Parliament, they must necessarily be armed with this power to secure legislation which is required for the due discharge of their responsibilities.

## VI.

### GENERAL OBSERVATIONS.

One remarkable fact emerges from a study of the above summary of the constitutional changes introduced by the Act of 1919 *viz.* that it has been the constant endeavour of the framers of the Act so to amend and add to the Government of India Act, 1915-16, as to bring it into a line with the constitutions of the Self-Governing Colonies, but specially, with that of the Commonwealth of Australia. Reading the Act and the connected documents between the lines one can easily discern a constant endeavour on the part of the august authors of the Reforms Scheme to raise India to the Dominion status: and it has been our endeavour to point out in the course of the annotations how far and to what extent the new constitution of British India agrees with, or differs from, the constitutions of the great Self-Governing Colonies.

A few other important features of the Constitutional Reforms of 1919 require prominent notice here.

(a) The first thing that strikes the reader is the wide rule-making power conferred by the Act which outlines the main features of the constitutional changes to be worked out in detail in the form of rules. This plan has been adopted again and again in legislation with reference to the Government of India. It is the only plan which secures elasticity, and an Act of reasonable dimensions, not overloaded with details. Any attempt to regulate voters' qualifications and the details of election by statute would involve very long and complicated provisions which, once incorporated in the statute, could not, in the ordinary course, be amended except by the slow and difficult process of further legislation. It must, moreover, be recognised that the Act provides for the

## INTRODUCTION.

introduction of new constitutional forms expressly devised to fit the conditions of a transitional stage. Elasticity is therefore essential, so as to admit of detailed arrangements being worked out in the light of experience on the basis of the general scheme outlined in the statute. The process of development would be seriously embarrassed if the whole system were made rigid at the start : it is also necessary to bear in mind that on some important matters different provisions will be required in different Provinces to suit different circumstances.

(b) We should note that under the Reforms scheme, where the Indian Legislature and the Government of India agree in any matter of purely Indian interest the Secretary of State will not ordinarily interfere and use his power of control and veto. Not only is the control of the Secretary of State to be relaxed in this respect but the Parliamentary Joint Select Committee<sup>a</sup> has gone further and has recommended that India should be left free to make laws regulating her fiscal arrangements. The following remarks of that Committee open a newer and brighter chapter in the history of India as an integral part of the British Empire—

“Nothing is more likely to endanger the good relations between India and Great Britain than the belief that India's fiscal policy is dictated from Whitehall in the interests of the trade of Great Britain. That such a belief exists at the moment there can be no doubt. That there ought to be no room for it in the future is equally clear. India's position in the Imperial Conference opened the door to negotiation between India and the rest of the Empire but negotiation without the power to legislate is likely to remain ineffective. A satisfactory solution of the question can only be guaranteed by the grant of liberty to the Government of India to devise those tariff arrangements which seem best fitted to India's needs as an integral portion of the British Empire \* \* \* It is quite clear that she should have the same liberty to consider her interest as Great Britain, Australia, New Zealand, Canada, and South Africa. In the opinion of the Committee, therefore, the Secretary of State should, as far as possible, avoid interference on the subject when the Government of India and its Legislature are in agreement, and they think that this intervention, when it does take place, should be limited to safeguarding the international obligations of the Empire or

any fiscal arrangement within the Empire to which His Majesty's Government is a party." Speaking in the House of Lords on the Government of India Bill on Dec. 12, 1919, Earl Curzon referred to this recommendation of Joint Committee in the following terms—

"For the first time a responsible and representative British Committee, charged with shaping a government for India, have conceded to India almost absolute freedom of fiscal policy. They have laid down the proposition and the principle that she ought to be free to exercise, in respect of her tariffs, and so on, the same degree of liberty as is enjoyed by the great Dominions of the Crown. This is a change so fundamental and fraught with such stupendous consequences that I am amazed at the little attention which it has attracted in this country. \* \* \* It is a starting point to a future career in the growth of self-governing institutions in India the importance of which cannot be exaggerated. I am the last to complain of it, because, in all the controversies about Cotton Duties, and so on, I have always fought the battles of India. Therefore I am delighted to see my views and my theories prevail". (*P. D. H. L., Dec. 12, 1919.*)

(c) Amidst all the multifarious changes, there stands out, in resplendent prominence, the great innovation of the introduction of partial responsible government in the Provinces. The illustrious authors of the Montagu-Chelmsford Report understand Responsible Government to mean "first that the members of the executive government should be responsible to, because capable of being changed by, their constituents; and, secondly that these constituents should exercise their power through the agency of their representatives in the assembly. These two conditions imply in their completeness that there exist constituencies based on a franchise broad enough to represent the interests of the general population, and capable of exercising an intelligent choice in the selection of their representatives; and secondarily, that it is recognised as a constitutional practice that the executive Government retains office only so long as it commands the support of a majority in the assembly." "It has to be borne in mind" said the Marquess of Crewe in the course of his remarks on the Government of India Bill, "that the possibility of responsible government in any country hinges not on the existence of a limited number of competent and eloquent

## INTRODUCTION.

statesmen or politicians, but upon the existence of a solid and reasonably well-informed electorate." An educated and vigilant electorate, organised political parties with well-thought-out programmes, and a vigorous press are essential to the sound working of a system of Responsible Government.

We cannot better conclude this brief Introduction than by quoting the following memorable words from H. I. M. the King-Emperor's Proclamation of December 23, 1919—

"The path will not be easy and in marching towards the goal there will be need of perseverance and of mutual forbearance between all sections and races of my people in India. I am confident that those high qualities will be forthcoming. I rely on the new popular assemblies to interpret wisely the wishes of those whom they represent and not to forget the interests of the masses who cannot yet be admitted to the franchise. I rely on the leaders of the people, the Ministers of the future, to face responsibility and endure to sacrifice much for the common interest, remembering that true patriotism transcends party and communal boundaries and while retaining the confidence of the legislatures, to co-operate with my officers for the common good in sinking unessential differences and in maintaining the essential standards of a just and generous Government. Equally do I rely on my officers to respect their new colleagues and to work with them in harmony and kindness ; to assist the people and their representatives in an orderly advance towards free institutions : and to find in these new tasks a fresh opportunity to fulfil as in the past their highest purpose of faithful service to my people."

Never have we found such a wealth of political wisdom concentrated in so few words : these inspiring words coming straight from the Royal heart embody the very quintessence of political wisdom and they should be inscribed in letters of gold on the portals of all legislative Chambers in India. Officials and non-officials, Ministers and Councillors, electorates and parties, Hindus and Mahomedans—all should constantly

## THE INDIAN CONSTITUTION.

remember these royal words and so shape their actions and policies that, in H. I. M. the King-Emperor's words, "under the guidance of Almighty God India may be led to greater prosperity and contentment and may grow to the fulness of political freedom."



# The Indian Constitution

## PART I.

### THE

## Government of India Act

### BEING

## The Consolidated Government of India Act, 1915-1919

### With Annotations.

## ARRANGEMENT OF SECTIONS

### PART I.

### HOME GOVERNMENT.

#### *The Crown.*

#### SECTION.

- ✓1. Government of India by the Crown.

#### *The Secretary of State.*

- ✓2. The Secretary of State.

#### *The Council of India.*

3. The Council of India.
4. Seat in council disqualification for Parliament.
5. Duties of Council.
6. Powers of Council.
7. President and vice-president of Council.
8. Meetings of Council.

## CONTENTS.

### SECTION.

9. Procedure at meetings.
10. Committees of Council.

#### *Orders and Communications.*

11. Correspondence between Secretary of State and India
12. .... *Repealed*
13. .... *Repealed*.
14. .... *Repealed*.
15. Communication to Parliament as to orders for commencing hostilities.
16. .... *Repealed*.

#### *Establishment of Secretary of State*

17. Establishment of Secretary of State.
18. Pensions and gratuities.

#### *Indian Appointments.*

19. Indian appointments.
- 19A. Relaxation of control of Secretary of State.

## PART II.

### THE REVENUES OF INDIA.

20. Application of revenues.
21. Control of Secretary of State over expenditure of revenues.
22. Application of revenues to military operations beyond the frontier.
23. Accounts of Secretary of State with Bank.
24. Powers of attorney for sale or purchase of stock and receipt of dividends.
25. Provisions as to securities.
26. Accounts to be annually laid before Parliament.
27. Audit of Indian accounts in United Kingdom.

## PART III.

### PROPERTY, CONTRACTS AND LIABILITIES.

28. Power of Secretary of State to sell, mortgage and buy property.

## CONTENTS.

### SECTION

- 29. Contracts of Secretary of State
- 29A. High Commissioner for India.
- 30. Power to execute assurances, &c., in India
- 31. Power to dispose of escheated property, &c.
- 32. Rights and liabilities of Secretary of State in Council.

### PART IV

#### THE GOVERNOR-GENERAL IN COUNCIL.

##### *General Powers and Duties of Governor-General in Council.*

- 33. General powers and duties of Governor-General in Council.

##### *The Governor-General.*

- 34. The Governor-General.

##### *The Governor-General's Executive Council.*

- 35. .... *Repealed.*
- 36. Members of Council.
- 37. Rank and precedence of Commander-in-chief
- 38. Vice-president of Council.
- 39. Meetings.
- 40. Business of Governor-General in Council.
- 41. Procedure in case of difference of opinion
- 42. Provision for absence of Governor-General from meetings of Council.
- 43. Powers of Governor-General in absence from Council.
- 43A. Appointment of Council Secretaries.

##### *War and Treaties.*

- 44. Restriction on power of Governor-General in Council to make war or treaty.

### PART V.

#### LOCAL GOVERNMENTS.

##### *General.*

- 45. Relation of Local Governments to Governor-General in Council.
- 45A. Classification of central and provincial subjects.

## CONTENTS.

### *Governorships.*

#### SECTION.

- 46. Revised system of Local Government in certain provinces.
- 47. Members of Executive Councils.
- 48. Vice-president of Council
- 49. Business of Governor in Council and Governor with Ministers.
- 50. Procedure in case of difference of opinion.
- 51. Provision for absence of Governor from meetings of Council.
- 52. Appointment of Ministers and Council Secretaries
- 52A. Constitution of new provinces, etc., and provision as to backward tracts.
- 52B. Saving.

#### *Lieutenant-Governorships and other Provinces.*

- 53. Lieutenant Governorships.
- 54. Lieutenant-Governors.
- 55. Power to create executive councils for Lieutenant-Governors
- 56. Vice-president of Council.
- 57. Business of Lieutenant-Governor in Council
- 58. Chief Commissioners.
- 59. Power to place territory under authority of Governor-General in Council.

#### *Boundaries*

- 60. Power to declare and alter boundaries of provinces.
- 61. Saving as to laws.
- 62. Power to extend boundaries of Presidency-towns.

## PART VI.

### THE INDIAN LEGISLATURE.

- 63. Indian Legislature.
- 63A. Council of State
- 63B. Legislative Assembly
- 63C. President of Legislative Assembly.
- 63D. Duration and Sessions of Legislative Assembly and Council of State.
- 63E. Membership of both Chambers.
- 64. Supplementary provisions as to composition of Legislative Assembly and Council of State.

## CONTENTS.

### SECTION.

- 65. Legislative Powers.
- 66. Laws for the Royal Indian Marine Service
- 67. Business at meetings
- 67A. Indian Budget
- 67B. Provision for case of failure to pass legislation
- 68. Assent of Governor-General to Acts
- 69. Power of Crown to disallow Acts
- 70. ....*Repealed*

### *Regulations and Ordinances.*

- 71. Power to make regulations
- 72. Power to make ordinances in cases of emergency.

### *Governors' Legislative Councils*

- 72A. Composition of Governors' legislative councils
- 72B. Sessions and duration of Governors' legislative councils.
- 72C. Presidents of governors' legislative councils
- 72D. Business and procedure in Governors' legislative councils.
- 72E. Provision for case of failure to pass legislation in Governors' legislative councils.

### *Local Legislatures.*

- 73. Local legislatures
- 74. ... ..*Repealed*
- 75. ....*Repealed*
- 76. Constitution of legislative councils of lieutenant-governors and chief commissioners.
- 77. Power to constitute new local legislatures.
- 78. Meetings of legislative councils of lieutenant-governors or chief commissioners.
- 79. ....*Repealed.*
- 80. Business at meetings
- 80A. Powers of local legislatures.
- 80B. Vacation of seats in local legislative councils.
- 80C. Measures affecting public revenues
- 81. Assent to Acts of local legislatures.
- 81A. Return and reservation of bills.
- 82. Power of Crown to disallow Acts of local legislatures. .

## CONTENTS.

### *Validity of Indian Laws.*

#### SECTION.

83. ....*Repealed.*  
84 Removal of doubts as to validity of certain Indian law.

#### PART VIA.

##### STATUTORY COMMISSION

- 84A Statutory Commission.

#### PART VII.

##### SALARIES, LEAVE OF ABSENCE, VACATION OF OFFICE, APPOINTMENTS, &C.

85. Salaries and allowances of governor-general and certain other officials in India.  
86. Leave of absence to members of executive councils.  
87. Provisions as to absence from India or presidency  
88. ....*Repealed.*  
89. Power for governor-general to exercise powers before taking seat.  
90. Temporary vacancy in office of governor-general  
91. Temporary vacancy in office of governor.  
92. Temporary vacancy in office of member of an executive council.  
93. Vacancies in legislative councils.  
94. Leave.  
95. Power to make rules as to Indian appointments.  
96. No disabilities in respect of religion, colour, or place of birth.  
96A. Qualification of rulers and subjects of certain states for office.

#### PART VIIA.

##### THE CIVIL SERVICES IN INDIA.

- 96B. The Civil Services in India.  
96C. Public Service Commission.  
96D. Financial control.  
96E. Rules made under Part VIIA

## CONTENTS.

### PART VIII.

#### THE INDIAN CIVIL SERVICE.

##### SECTION.

97. Rules for admission to the Indian Civil Service.
98. Offices reserved to the Indian Civil Service.
99. Power to appoint certain persons to reserved offices.
100. Power to make provisional appointments in certain cases.

### PART IX.

#### THE INDIAN HIGH COURTS.

##### *Constitution.*

101. Constitution of high courts.
102. Tenure of office of judges of high courts
103. Precedence of judges of high courts.
104. Salaries, etc., of judges of high courts.
105. Provision for vacancy in the office of chief justice or other judge.

##### *Jurisdiction*

106. Jurisdiction of high courts.
107. Powers of high court with respect to subordinate courts.
108. Exercise of jurisdiction by single judges or division courts.
109. Power for Governor-General in Council to alter local limits of jurisdiction of high courts.
110. Exemption from jurisdiction of high court.
111. Written order by governor-general justification for act in any court in India.

##### *Law to be administered.*

112. Law to be administered in cases of inheritance and succession.

##### *Additional High Courts.*

113. Power to establish additional high courts.

##### *Advocate-General.*

114. Appointment and powers of advocate-general.

## CONTENTS.

### PART X.

#### ECCLESIASTICAL ESTABLISHMENT.

##### SECTION.

- 115. Jurisdiction of Indian Bishops.
- 116. ....*Repealed.*
- 117. Consecration of person resident in India appointed to bishopric
- 118. Salaries and allowances of bishops and archdeacons.
- 119. Payments to representatives of bishops
- 120. Pensions to bishops
- 121. Furlough rules.
- 122 Establishment of chaplains of church of Scotland.
- 123 Saving as to grants to Christians

### PART XI.

#### OFFENCES, PROCEDURE AND PENALTIES.

- 124. Certain acts to be misdemeanours. Oppression—Wilful disobedience—Breach of duty—Trading—Receiving presents
- 125. Loans to Princes or Chiefs.
- 126. Carrying on dangerous correspondence.
- 127. Prosecution of offences in England.
- 128. Limitation for prosecutions in British India.
- 129. Penalties.

### PART XII.

#### SUPPLEMENTAL.

##### *Power to make rules*

- 129A. Power to make rules

##### *Repeal of Acts*

- 130. Repeal.

##### *Savings.*

- 131. Saving as to certain rights and powers
- 132. Treaties, contracts, and liabilities of East India Company
- 133. Orders of East India Company.

##### *Definitions and Short Title.*

- 134 Definitions.
- 135. Short title.



## CONTENTS.

### SCHEDULES.

FIRST SCHEDULE.—Number of Members of Legislative Councils.

SECOND SCHEDULE.—Official salaries, &c.

THIRD SCHEDULE.—Offices reserved to the Indian Civil Service.

FOURTH SCHEDULE.—Acts repealed.

FIFTH SCHEDULE.—Provisions of this Act which may be repealed or altered by the Indian Legislature.

## EXPLANATIONS OF ABBREVIATIONS.

M. C. R.=Montagu-Chelmsford Report on Indian Constitutional Reforms.

J. S. C. R.=Report of the Joint Select Committee on the Government of India Bill, 1919.

C. C. R.=Report of Marquess of Crewe's Committee to enquire into the Home Administration of Indian affairs.

G. I. D.=Government of India's Despatch on Indian Constitutional Reforms, dated March 5th, 1919.

P. D. H. L.—Parliamentary Debates in the House of Lords on the Government of India Bill, 1919.

P. D. H. C.=Parliamentary Debates in the House of Commons on the Government of India Bill, 1919.

S. C. R.=Report of Lord Southborough's Committees on Franchise and Division of Functions.

Documents I.=Indian Constitutional Documents, Vol. I.

C.=Indian Law Reports, Calcutta Series

B.= „ „ „ Bombay „

M = „ „ „ Madras „

A.= „ „ „ Allahabad „

Bom. L. R.=Bombay Law Reporter.

M. H. C. R.=Madras High Court Report.

W. R. =Calcutta Weekly Reporter.

C. W. N. =Calcutta Weekly Notes.

C. L. J. =Calcutta Law Journal.

# EXPLANATIONS OF ABBREVIATIONS.

The marginal references in square brackets [ ] indicate the enactments on which the sections are based.

- 1770=10 Geo. 3, c. 47.=The East India Company Act.  
 1772=13 Geo. 3, c. 63.= Do Do Do  
 1780=21 Geo. 3, c. 70.= Do Do Do  
 1793=33 Geo. 3, c. 52.= Do Do Do  
 1797=37 Geo. 3, c. 142.=The East India Act.  
 1800=39 & 40 Geo. 3, c. 79.=The Government of India Act.  
 1813=53 Geo. 3, c. 155.=The East India Company Act.  
 1815=55 Geo. 3, c. 84.=The Indian Presidency Towns Act.  
 1823=4 Geo. 4, c. 71.=The Indian Bishops and Courts Act.  
 1825=6 Geo. 4, c. 85.=The Indian Salaries and Pensions Act.  
 1826=7 Geo. 4, c. 56.=The East India Officers' Act.  
 1833=3 & 4 Will. 4, c. 85.=The Government of India Act.  
 1835=5 & 6 Will. 4, c. 52.=The India (North West Pro-  
 vinces) Act.  
 1837=7 Will. 4 & 1 Vict., c. 47.=The India Officers' Salaries  
 Act.  
 1842=5 & 6 Vict., c. 119.=The Indian Bishop's Act.  
 1853=16 & 17 Vict., c. 95.=The Government of India Act.  
 1854=17 & 18 Vict., c. 77.=The Government of India Act.  
 1858=21 & 22 Vict., c. 106.=The Government of India Act.  
 1859=22 & 23 Vict., c. 41.=The Government of India Act.  
 1861=24 & 25 Vict., c. 54.=The India Civil Service Act.  
 1861=24 & 25 Vict., c. 67.=The Indian Councils Act.  
 1861=24 & 25 Vict. c. 104.=The Indian High Courts Act.  
 1865=28 & 29 Vict., c. 15.=The Indian High Courts Act.  
 1865=28 & 29 Vict., c. 17.=The Government of India Act.  
 1869=32 & 33 Vict., c. 97.=The Government of India Act.  
 1869=32 & 33 Vict., c. 98.=The Indian Councils Act.  
 1870=33 & 34 Vict., c. 3.=The Government of India Act.  
 1871=34 & 35 Vict., c. 34.=The Indian Councils Act.

## EXPLANATIONS OF ABBREVIATIONS.

- 1871=34 & 35 Vict., c. 62.=The Indian Bishops Act.  
1874=37 & 38 Vict., c. 91.=The Indian Councils Act.  
1876=39 & 40 Vict., c. 7.=The Council of India Act.  
1880=43 Vict., c. 3.=The Indian Salaries & Allowances Act.  
1884=47 & 48 Vict., c. 38.=The Indian Marine Service Act.  
1892=55 & 56 Vict., c. 14.=The Indian Councils Act.  
1893=56 & 57 Vict., c. 70.=The East India Loans Act.  
1903=3 Edw. VII., c. 11.=The Contracts (India Office) Act.  
1904=4 Edw. VII., c. 26.=The Indian Councils Act.  
1907=7 Edw. VII., c. 35.=The Council of India Act.  
1909=9 Edw. VII., c. 4.=The Indian Councils Act.  
1911=1 & 2 Geo. V, c. 18.=The Indian High Courts Act.  
1912=2 & 3 Geo. V, c. 6.=The Government of India Act.  
1915=5 & 6 Geo. V, c. 61.=The Government of India Act.  
1916=6 & 7 Geo. V, c. 37.=The Government of India  
Amendment Act.  
1919=9 & 10 Geo. V, c. 101.=The Government of India Act.
-

# The Indian Constitution.

## PART I.

### THE ANNOTATED

## Government of India Act.<sup>1</sup>

Whereas<sup>2</sup> it is the declared policy<sup>3</sup> of Parliament<sup>4</sup> to provide for the increasing association<sup>5</sup> of

*Preamble, 1919.* Indians<sup>6</sup> in every branch of Indian administration,<sup>7</sup> and for the gradual development<sup>8</sup> of self-governing institutions,<sup>9</sup> with a view to the progressive realisation<sup>10</sup> of responsible government<sup>11</sup> in British India<sup>12</sup> as an integral part<sup>13</sup> of the empire<sup>14</sup> :

And whereas progress<sup>15</sup> in giving effect to this policy<sup>16</sup> can only be achieved by successive stages<sup>17</sup>, and it is expedient that substantial steps<sup>18</sup> in this direction should now be taken :

And whereas the time and manner<sup>19</sup> of each advance can be determined only by Parliament, upon whom responsibility lies for the welfare and advancement of the Indian peoples<sup>20</sup> :

And whereas the action of Parliament in such matters<sup>21</sup> must be guided by the co-operation received from those<sup>22</sup> on whom new opportunities of service<sup>23</sup> will be conferred, and by the extent to which it is

found that confidence can be reposed in their sense of responsibility<sup>24</sup> :

And whereas concurrently<sup>25</sup> with the gradual development<sup>26</sup> of self-governing institutions<sup>27</sup> in the Provinces of India<sup>28</sup> it is expedient to give to those Provinces in provincial matters<sup>29</sup> the largest measure of independence<sup>30</sup> of the Government of India<sup>31</sup>, which is compatible with the due discharge by the latter of its own responsibilities<sup>32</sup> :

Be it therefore enacted by the King's most Excellent Majesty<sup>33</sup>, by and with the advice and consent of the Lords Spiritual and Temporal<sup>34</sup>, and Commons<sup>35</sup>, in this present Parliament assembled, and by the authority of the same<sup>36</sup>, as follows :—

### § 1. "Government of India Act."

The principal Act was the Government of India Act of 1915. It was called "The Government of India Acts of 1915 and 1916" after the amending Act of 1916 was passed. The Act embodying the Reform Proposals is called the "Government of India Act, 1919." The principal Act of 1915 as amended by subsequent amending Acts of 1916 and 1919 is to be cited simply as "The Government of India Act." See *Sec. 47 of the Government of India Act, 1919.*

### § 2. "Whereas."

The proper function of a preamble is to explain and recite certain facts which are necessary to be explained and recited, before the enactments contained in an Act of Parliament can be understood. A preamble may be used for other reasons *viz.*, to limit the scope of certain expressions or to explain facts or introduce definitions. (*Lord Thring, Practical Legislation, p. 36.*)

The preamble has been said to be a good means to find out the intention of a statute, and, as it were, a key to the understanding

of it. It usually states, or professes to state, the general object and meaning of the Legislature in passing the measure. Hence it may be legitimately consulted for the purpose of solving an ambiguity or fixing the connotation of words which may possibly have more than one meaning, or determining the scope or limiting the effect of the Act, whenever the enacting parts are, in any of these respects, open to doubt. But the preamble cannot either restrict or extend the legislative words, when the language is plain and not open to doubt, either as to its meaning or its scope. [*Maxwell on the Interpretation of Statutes*, 1875, pp. 34-45. See also 9 W. R. 402 (404); 7 C. 333; 6 C. 707; 4 Rom. L. R. 504; 11 A. 262.]

Though the preamble may be consulted in case of doubt, as an index to the intention of the legislature, it cannot, where the enacting provisions of a statute go beyond the preamble and are clear in language, be called in to restrict their operation or to cut them down. [See 22 B. 321 (F.B.); 11 A. 262; 2 M. H. C. R. 322; 14 C. 176].

"The Preamble of the Bill, as drafted, was based on the announcement of His Majesty's Government in Parliament of the 20th August, 1917, and it incorporated that part of the announcement which pointed to the progressive realisation of responsible government in British India as an integral part of the Empire, and to the expediency of gradually developing self-governing institutions in India, and it referred to the granting to the Provinces of India of a large measure of independence of the Government of India. It did not, however, deal with those parts of the announcement which spoke of the increasing association of Indians in every branch of the administration, and declared that the progress of this policy could only be achieved by successive stages, and that Parliament, advised by his Majesty's Government and by the Government of India, on whom the responsibility lies for the welfare and advancement of the Indian people, must be the judge of the time and measure of each advance, and be guided by the co-operation received from those upon whom new opportunities of service are conferred and by the extent to which it is found that confidence can be reposed in their sense of responsibility. ✓

"The Committee have enlarged the preamble so as to include all parts of the announcement of the 20th August, 1917. Their reason for doing so is that an attempt has been made to distinguish between the parts of this announcement, and to attach a different value to

each part according to opinion. It has been said, for instance, that whereas the first part is a binding pledge, the latter part is a mere expression of opinion of no importance. But the Committee think that it is of the utmost importance, from the very inauguration of these constitutional changes, that Parliament should make it quite plain that the responsibility for the successive stages of the development of self-government in India rests on itself and on itself alone, and that it cannot share this responsibility with, much less delegate it to, the newly-elected legislatures of India.

"They also desire to emphasize the wisdom and justice of an increasing association of Indians with every branch of the administration, but they wish to make it perfectly clear that His Majesty's Government must remain free to appoint Europeans to those posts for which they are specially required and qualified." (*J. S. C. R.*)

SIR H. CRAIK thus remarked in his speech delivered in the House of Commons on December 5th 1919 —

We must remember, and it must be known to our fellow-citizens in India, what is the attitude of this House towards India. It is expressed in grave and solemn words in the Preamble of the Bill, every word of which was weighed, and which repeated the words of the famous Declaration of the 20th August, 1917, to the effect that the 'manner of each advance can be determined only by Parliament upon whom responsibility lies for the welfare and advancement of the Indian peoples.'

### § 3. "The Declared Policy."

This refers to the following Declaration made by the Secretary of State for India in the House of Commons on August 20th, 1917—  
 "The policy of His Majesty's Government, with which the Government of India are in complete accord, is that of the increasing association of Indians in every branch of the administration and the gradual development of self-governing institutions with a view to the progressive realization of responsible government in India as an integral part of the British Empire. They have decided that substantial steps in this direction should be taken as soon as possible, and that it is of the highest importance as a preliminary to considering what these steps should be that there should be a free and informal exchange of opinion between those in authority at Home and in India. His Majesty's



Government have accordingly decided, with His Majesty's approval, that I should accept the Viceroy's invitation to proceed to India to discuss these matters with the Viceroy and the Government of India, to consider with the Viceroy the views of local Governments and to receive with him the suggestions of representative bodies and others.

"I would add that progress in this policy can only be achieved by successive stages. The British Government and the Government of India, on whom the responsibility lies for the welfare and advancement of the Indian peoples, must be judges of the time and measure of each advance, and they must be guided by the co-operation received from those upon whom new opportunities of service will thus be conferred and by the extent to which it is found that confidence can be reposed in their sense of responsibility.

"Ample opportunity will be afforded for public discussion of the proposals which will be submitted in due course to Parliament."

The above policy is based on the following four principles enunciated in paragraphs 188 to 191 of the Montagu-Chelmsford Report (*vide Documents I, pp. 484-487*):—

(1) *"There should be, as far as possible, complete popular control in local bodies and the largest possible independence for them of outside control"*

(2) *"The provinces are the domain in which the earlier steps towards the progressive realization of responsible Government should be taken. Some measure of responsibility should be given at once, and our aim is to give complete responsibility as soon as conditions permit. This involves at once giving the provinces the largest measure of independence, legislative, administrative and financial, of the Government of India which is compatible with the due discharge by the latter of its own responsibilities"*

(3) *"The Government of India must remain wholly responsible to Parliament, and saving such responsibility, its authority in essential matters must remain indisputable, pending experience of the effect of the changes now to be introduced in the provinces. In the meantime the Indian Legislative Council should be enlarged and made more representative and its opportunities of influencing Government increased"*

(4) *"In proportion as the foregoing changes take effect, the control of Parliament and the Secretary of State over the Government of India and provincial Governments must be relaxed"*

The authors of the Montagu-Chelmsford Report justify the advance in policy in the following words :—

“The reforms of 1909 afforded no answer, and could afford no answer, to Indian political problems. Narrow franchises and indirect elections failed to encourage in members a sense of responsibility to the people generally, and made it impossible, except in special constituencies, for those who had votes to use them with perception and effect. Moreover, the responsibility for the administration remained undivided : with the result that while Governments found themselves far more exposed to questions and criticism than hitherto, questions and criticism were uninformed by a real sense of responsibility, such as comes from the prospect of having to assume office in turn. The conception of a responsible executive, wholly or partially amenable to the elected councils, was not admitted. Power remained with the Government, and the councils were left with no functions but criticism. It followed that there was no reason to loose the bonds of official authority, which subjected local governments to the Government of India and the latter to the Secretary of State and Parliament. Such a situation, even if it had not been aggravated by external causes, might easily give rise to difficulties the plan afforded no room for further advance along the same lines. Only one more thing remained to do, and that was to make the legislative and administrative acts of an irremovable executive entirely amenable to the elected councils ; on which must have ensued the deadlock and disruption to which we refer elsewhere. The Morley-Minto reforms in our view are the final outcome of the old conception which made the Government of India a benevolent despotism (tempered by a remote and only occasionally vigilant democracy), which might, as it saw fit, for purposes of enlightenment, consult the wishes of its subjects. To recur to Sir Bartle Frere's figure, the Government is still a monarch in durbar ; but his councillors are uneasy, and not wholly content with his personal rule ; and the administration in consequence has become slow and timid in operation. Parliamentary usages have been initiated and adopted in the councils up to the point where they cause the maximum of friction, but short of that at which by having a real sanction behind them they begin to do good. We have at present in India neither the best of the old system, nor the best of the new. Responsibility is the savour of popular government, and that savour the present councils wholly lack. We are

agreed that our first object must be to invest them with it. They must have real work to do : and they must have real people to call them to account for their doing of it." (*M. C. R. para. 81*)

"It seems to us that the inherent weakness of the position created by the Morely-Minto changes is excellently brought out in the following comment :—

"We must make up our minds either to rule ourselves or to let the people rule : there is no half-way house, except of course on the highway of deliberate transition. At present we are doing neither. We are trying to govern by concession and each successive concession has the air of being wrung from us. We keep public business going by bargaining and negotiation—not, however, the healthy bargaining of the market place, but a steady yielding to assaults which always leave some bitterness behind on both sides. This is in no sense the fault of individuals ; it follows inevitably from the influences at work. Up to Lord Curzon's viceroyalty, there was a sturdy determination to do what was right for India, whether India altogether liked it or not. The reforms which followed his régime brought in a power of challenge and obstruction—  
influence without responsibility ; and rather than fight we have often to give way. We are shedding the rôle of benevolent despotism, and the people—especially those who are most friendly to us—cannot understand what rôle we mean to assume in its place. We are accordingly losing their confidence and with it some of our power for good. If we returned to sheer despotism, we should carry many of the people with us, and should secure an ordered calm. But that being impossible, we must definitely show that we are moving from the eastern to western ideal of rule. And, secondly, we must maintain the full weight and order of government while the move is going on. Otherwise we cannot look for either internal peace or the co-operation of the people, or indeed for anything else except growing weakness with the fatal consequences that weakness involves in an eastern country."

In these words we catch an echo of Warren Hastings' pregnant saying, 'In no part of the world is the principle of supporting a rising interest and of depressing a falling one more prevalent than in India.' Transition is indeed a difficult business and full of risks that we should be short-sighted to ignore. The old structure does not admit of development.—All that could be done with it would be to increase the size of the non-official part of the councils—a step that would deprive

those responsible for the government of the country or any power of obtaining necessary legislation. We must, therefore, create a new structure. That means time for the fresh material to form ; real work for it to do so that it may harden ; and retention of genuine powers of guidance, supervision, and if need be, of intervention, until such time as the task is complete". (*M. C. R. para. 101*).

"We believe that the announcement of August 20 was right and and wise ; and that the policy which it embodies is the only possible policy for India. We have seen it estimated that the number of people who really ask for free institutions does not exceed five per cent. of the population. It is in any case a small proportion ; but to the particular numeral we attach no importance whatever. We are not setting about to stir 95 per cent. of the people out of their peaceful conservatism and setting their feet upon a new and difficult path merely at the bidding of the other five per cent. : nor would that be our reason, whether the articulate minority were 20 per cent. or one-half per cent. of the whole. Our reason is the faith that is in us. We have shown how step by step British policy in India has been steadily directed to a point at which the question of a self-governing India was bound to arise ; how impulses, at first faint, have been encouraged by education and opportunity, how the growth quickened nine years ago, and was immeasurably accelerated by the war. We measure it not by the crowds at political meetings or the multiplication of newspapers, but by the infallible signs that indicate the growth of character. We believe profoundly that the time has now come when the sheltered existence which we have given India cannot be prolonged without damage to her national life ; that we have a richer gift for her people than any that we have yet bestowed on them ; that nationhood within the Empire represents something better than anything India has hitherto attained, that the placid, pathetic contentment of the masses is not the soil on which such Indian nationhood will grow, and that in deliberately disturbing it we are working for her highest good." (*M. C. R. para. 144*.)

In the course of his speech in the House of Lords on the second reading of the Government of India Bill THE MARQUESS OF CREWE showed the necessity for a change of policy in the following words :—

"In the first instance it became evident that the enlarged Councils constituted under the Morley-Minto reforms, while doing in some respects

a great service, were bringing about a peculiar danger of their own. It was evident that the faculty of criticism by exceedingly able and instructed members of the Viceroy's and different Indian Legislatures was being over exercised in a manner which was beginning to place Governors and governed in India on uncomfortable terms. That exercise of criticism without responsibility, which of course is the easiest of all forms of criticism, was beginning to develop in a manner that was almost dangerous. Then, in the second place, and what is a far more agreeable reason for believing in the necessity of change, India was showing in a great many respects a capacity and was earning a respect, not possessed before, through the splendid part which she was playing in the European war. Those two reasons of themselves were enough to make it clear to thoughtful people that some further advance must soon be made, and it became obvious to not a few people before the announcement of 20th August, 1917."

The authors of the Montagu-Chelmsford Report describe the final outcome of the above policy in the following terms.—

"Our conception of the eventual future of India is a sisterhood of States, self-governing in all matters of purely local or provincial interest, in some cases corresponding to existing provinces, in others perhaps modified in area according to the character and economic interests of their people. Over this congeries of States would preside a central Government, increasingly representative of and responsible to the people of all of them; dealing with matters, both internal and external, of common interest to the whole of India, acting as arbiter in inter-state relations, and representing the interests of all India on equal terms with the self-governing units of the British Empire. In this picture there is a place also for the Native States. It is possible that they too will wish to be associated for certain purposes with the organisation of British India, in such a way as to dedicate their peculiar qualities to the common service, without loss of individuality." (*M. C. R. para 349.*)

*See also Lord Selbourne's and Lord Sinha's speeches (printed in Part II) delivered on the Second Reading of the Government of India Bill, 1919.*

#### § 4. Parliament.

The word "Parliament", which, Bagehot says, is descriptive of the greatest inquiring, discussing and legislative machine the world has ever known, "the great engine of popular instruction and political controversy,"

is derived from the Old English *Parlement*, *Parler* to speak : hence a formal conference on public affairs ; an assembly of representatives of a nation. (*Webster*).

The King in Parliament is the Legislative Sovereign of the British Empire. The British Parliament is at once the oldest, the most comprehensive in jurisdiction, and the most powerful among modern legislative assemblies. Ever since the close of the fourteenth century it has comprised uninterruptedly, aside from the King, the two branches which exist at the present time *viz*, the House of Commons and the House of Lords.

The range of jurisdiction which, step by step, these chambers, both separately and conjointly, have acquired, has been broadened until, so far as the dominions of the British Crown extend, it covers almost the whole of the domain of human government. And within this enormous expanse of political control the competence of the Chambers knows, in neither theory nor fact, any restriction. "The British Parliament," writes Lord Bryce, "can make and unmake any and every law, change the form of government or the succession to the Crown, interfere with the course of justice, extinguish the most sacred rights of the citizen. Between it and the people at large there is no legal distinction, because the whole plenitude of the people's rights and powers resides in it, just as if the whole nation were present within the chambers where it sits. \* \* \*. Both practically and legally it is to-day the only and the sufficient depository of the authority of the nation ; and it is therefore, within the sphere of the law, irresponsible and omnipotent."

*The House of Commons* : - The present House of Commons consists of 707 members, as compared with the 670 who had seats in former Houses. According to the *Representation of the People Act* of 1918 a man is qualified to vote by six months' residence in a constituency or by occupation of business premises therein : it also enfranchises women who have attained the age of thirty, and are local government electors or the wives of local government electors. Seats have been redistributed in Great Britain on the basis of one member for every 70,000 of the population.

Subject to disqualifications arising from peerage, holding of office, bankruptcy, and conviction for treason or felony, every British subject who is of full age is eligible to the membership of the House

of Commons. Indians, as British Subjects, are also eligible for membership if they are returned by English constituencies. The late Mr. Dadabhai Naoroji and Sir M. Bhowanaggee succeeded in entering the House of Commons as members for English constituencies. A peer of the United Kingdom or of Scotland is not eligible, but a peer of Ireland, unless he be one of the representative Irish peers, is eligible for any but an Irish seat. Where a member of the House of Commons is described as a lord, he is either an Irish peer, or more frequently, a commoner holding a courtesy title as son of a peer.

*The House of Lords*:—The House of Lords now consists of members who hold their seats either—(1) by hereditary right (2) by the creation of the reigning sovereign, (3) by virtue of their office, such as English Bishops, (4) by election for life, such as Irish peers, of whom there are twenty-eight, (5) by election for the duration of a Parliament, such as the Scotch representative peers, of whom there are sixteen. The House of Lords is at present composed of about 600 members with different titles *viz*, the Princes of the Blood Royal, the Lords Temporal consisting of the English hereditary peers (Duke, Marquises, Earls, Viscounts and Barons), the Lords Spiritual consisting of the Archbishops of Canterbury and York and twenty-four of the Bishops, according to the seniority of consecration (but always including the bishops of London, Durham and Winchester); sixteen Scottish representative peers, elected by the whole body of Scottish peers to sit for the term of Parliament; twenty-eight Irish peers to sit for life; and six judicial members known as Lords of Appeal in Ordinary, sitting as life peers only by virtue of their office. It will be seen that the House of Lords, as it is at present constituted, is mainly hereditary in character.

*The Functions of Parliament*.—The functions of Parliament may be briefly described under three heads. The first is that of criticism, involving the habitual scrutiny and control of the measures of the executive and administrative organs, through the instrumentality of questions, formal enquiries, and, if need be, judicial procedure. The second function is the exercise of the power of judicature. The powers of a judicial character exercised by the two Chambers in their capacity of the High Court of Parliament comprise—(1) the powers possessed by each of the Houses to deal with the constitution and conduct of its own membership; (2) the power of the Lords to try their own members when charged with treason or felony; (3) the

jurisdiction of the Lords in the capacity of a final court of appeal for the United Kingdom ; (4) the power of the two Houses, acting jointly, to carry through impeachments of public officers and to enact bills of attainder,\* and (5) the effecting of the removal of certain kinds of public officers (*e. g.*, members of the Council of India through the agency of an address from both Houses to the Crown. Most important among surviving parliamentary functions of a judicial character is the exercise of appellate jurisdiction by the House of Lords. These judicial functions are now always exercised by the Lord Chancellor who is *ex-officio* president of the House of Lords, and six Lords of Appeal in Ordinary who are learned judges appointed as life peers specially to perform this duty. These special "Law Lords" are assisted from time to time by other Lords who have served as judges of the higher Courts or who are specially learned in the law. The House of Lords may sit, when acting as a Court, when Parliament is not in session, after a prorogation, or even after a dissolution. For the House of Lords when sitting as a Court, is, except in its mode of procedure, totally unlike the body which obeys the House of Commons in law-making.

The principal functions of Parliament to-day are, however, those of legislation and financial and administrative control. In all these matters the two Houses wielded, in theory, co-ordinate authority prior to the passing of the Parliament Act of 1911 which thus limits the legislative and financial powers of the House of Lords—

(a) A public bill passed by the House of Commons and certified by the Speaker to be, within the terms of the Act, a "money bill" shall, unless the Commons direct to the contrary, become an act of Parliament on the royal assent being signified, notwithstanding that the House of Lords may not have consented to the bill within one month after it shall have been sent up to that House.

(b) Any other public bill (except one to extend the maximum

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\* "Impeachment" is a judicial trial, by the House of Lords, of a person accused, by the House of Commons, of grave offences which the ordinary law cannot reach. through its insufficiency or uncertainty, or in case of which it is apprehended that the execution of the law will be corruptly interfered with. Impeachment has now lost its value and has fallen into disuse, the last occasion upon which impeachment proceedings were instituted being 1805. Procedure by bill of attainder, arising from the legislative omnipotence of Parliament and following the ordinary course of legislation, is also obsolete.



duration of Parliament beyond five years) which is passed by that House of Commons in three successive sessions, whether or not of the same Parliament, and which, having been sent up to the House of Lords at least one month, in each case, before the end of the session, is rejected by that Chamber in each of those sessions shall, unless the House of Commons direct to the contrary, become an act of Parliament on the royal assent being signified thereto, notwithstanding the fact that the House of Lords has not consented to the bill. It is required that at least two years shall have elapsed between the date of the second reading of such a bill in the first of these sessions of the House of Commons and the final passage of the bill in the third of the sessions.

*Privileges of the Houses and of Members* :—On the basis in part of custom and in part of statute, there exists a body of definitely established privileges, some of which appertain to the Commons as a Chamber, some similarly to the Lords, and some to the individual members of both Houses. The privileges, which at the opening of a Parliament the newly elected Speaker\* requests, and, as a matter of course, obtains for the chamber over which he presides, include principally those of freedom from arrest, freedom of speech, access to the Sovereign, and a “favourable construction” upon the proceedings of the House. Freedom from arrest is enjoyed by members during the sitting of Parliament and forty days before and after the session, except in cases of treason, felony, etc. They have perfect freedom of speech and debate in the House and they cannot be legally dealt with for anything said in the House by any Court or body outside the House. If, however, they cause their words or speeches to be published, they are subject to prosecution for libel, like any private person. The right of free access to the Sovereign is enjoyed by both Houses. But, while the Lords are individually entitled to have access to the Sovereign, the Commons enjoy the right as a body. Another privilege which still survives is that of exemption from jury duty, though no longer of refusing to attend Court in the capacity of a witness. Each House enjoys the privilege of

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\* The “Speaker” is elected at the beginning of a parliament by and from the members of the House of Commons and his tenure of office, unless terminated by resignation or death, continues through the term of that parliament. Though nominally elected, the Speaker is in fact chosen by the ministry, and he is pretty certain to be taken in the first instance from the party in power. During the 19th century, however, it became customary to re-elect a speaker as long as he should be willing to serve, regardless of party affiliation.

regulating its own proceedings, of committing persons for contempt and of deciding contested elections. The last-mentioned function the House of Commons, however, has delegated to the Courts. Since 1911 the non-official members of the House of Commons are being paid an annual salary of £400. No salary attaches to membership of the other House. The Lords reserve to themselves the right of trying all cases of treason or felony, they are exempt from arrest in civil causes, not merely during and immediately before and after sessions, but at all times, and they enjoy all the rights, privileges and distinctions which, through law or custom, have become inherent in their order.

*For Parliamentary Control over Indian affairs see Notes under Sec. 3.*

### § 5. Increasing Association of Indians.

Describing the roads along which an advance should be made towards the goal of British Rule in India, Lord Chelmsford, in the course of his speech in the Indian Legislative Council on the 5th of September, 1917, said —

“The second road, in our opinion, lay in the domain of more responsible appointment of Indians under Government. We felt that it was essential to progress towards the goal that Indians should be admitted in steadily increasing proportion to the higher grades of the various services and departments and to more responsible posts in the administration generally. It is, I think, obvious that this is a most important line of advance. If we are to get real progress, it is vital that India should have an increasing number of men versed not only in the details of every day administration, but in the whole art of Government.”

*The case for increasing the Indian element is thus described in the Montagu-Chelmsford Report.*—In the forefront of the announcement of August 20 the policy of the increasing association of Indians in every branch of the administration was definitely placed. It has not been necessary for us—nor indeed would it have been possible—to go into this large question in detail in the time available for our inquiry. We have already seen that Lord Hardinge's Government were anxious to increase the number of Indians in the public services, and that a Royal Commission was appointed in 1912 to examine and report on the existing limitations in the employment of Indians. The Com-

mission made an exhaustive inquiry into the whole subject, in the course of which it visited every province in India, and its report is now being examined by the Government of India and the local Governments with a view to formulating their recommendations with all possible despatch. The report must form the basis of the action now to be taken, but in view of the altered circumstances we think that it will be necessary to amplify its conclusions in some important respects. The report was signed only a few months after the outbreak of war and its publication was deferred in the hope that the war would not be prolonged. When written it might have satisfied moderate Indian opinion, but when published two years later it was criticised as wholly disappointing. Our inquiry has since given us ample opportunity of judging the importance which Indian opinion attaches to this question. While we take account of this attitude, a factor which carries more weight with us is that since the report was signed an entirely new policy towards Indian government has been adopted, which must be very largely dependent for success on the extent to which it is found possible to introduce Indians into every branch of the administration. It is a great weakness of public life in India to-day that it contains so few men who have found opportunity for practical experience of the problems of administration. Although there are distinguished exceptions, principally among the Dewans of Native States, most Indian public men have not had an opportunity of grappling with the difficulties of administration, nor of testing their theories by putting them into practice. Administrative experience not only sobers the judgment and teaches appreciation of the practical difficulties in the way of the wholesale introduction of reforms however attractive and the attainment of theoretical ideals, but by training an increasing number of men in the details of day-to-day business it will eventually provide India with public men versed in the whole art of government. If responsible government is to be established in India, there will be a far greater need than is even dreamt of at present for persons to take part in public affairs in the legislative assemblies and elsewhere ; and for this reason the more Indians we can employ in the public services the better. Moreover it would lessen the burden of Imperial responsibilities if a body of capable Indian administrators could be produced. We regard it as necessary therefore that recruitment of a largely increased proportion of Indians should be begun at once. The personnel of a service cannot be altered in a day - it must be a long and steady process ; if, therefore, the services

are to be substantially Indian in personnel by the time that India is ripe for responsible government no time should be lost in increasing the proportion of Indian recruits. (*M. C. R. para 313.*)

The reformed constitution of British India provides for the "increasing association of Indians" in the following, among other, ways -

- (a) In accordance with the recommendations of the Joint Select Committee the constitution of the Secretary of State's Council of India has been modified by the introduction of more Indians into it and by reducing the term of office of members from seven years to five years, in order to relieve Indian members from the necessity of spending so long a period as seven years in England. The Indian members of the Council of India are, moreover, paid an annual subsistence allowance of £600 in addition to the usual annual salary of £1200.
- (b) The limitation on the number of the members of the Governor-General's Executive Council has now been removed : and, in accordance with the recommendations of the Joint Select Committee, there will henceforth be at least three Indian members on the Governor-General's Executive Council—and according to Lord Selborne, "possibly four if the Legal Member is also an Indian" A significant change made by the Government of India Act, 1919, is that henceforth "a pleader of a High Court of not less than ten years' standing" may be appointed as the Legal Member of the Governor-General's Executive Council.
- (c) For the present there will be two responsible Indian ministers in the Governor's provinces : as regards executive councillors—there will normally be either (a) one non-official Indian and one non-Indian member with service qualifications or (b) two non-Indian members with service qualifications and two unofficial Indian members. Thus the Provincial Executive Councils will each contain three or four Indian members.
- (d) The provision for the appointment of Council Secretaries for the Indian and Provincial Legislatures will have the effect of increasingly associating Indians with the administration.
- (e) The larger powers of administrative and financial control vested in the Indian and local Legislatures will also allow Indians to take an increasing share in the administration of the country.

§ 6. **Indians.**

"Indians" include not only "persons born and domiciled in British India, of parents habitually resident in British India, and not established there for temporary purposes"; but "Indians" include rulers or subjects of Native States as well. This is evident from—

(1) sec. 96 A of the Act which empowers the Governor-General in Council, with the sanction of the Secretary of State in Council, to declare, by notification, that "subject to any conditions or restrictions prescribed in the notification, any named ruler or subject of any state in India shall be eligible for appointment to any civil or military office under the Crown to which a native of British India may be appointed, or any named subject of any state, or any named member of any independent race or tribe, in territory adjacent to India, shall be eligible for appointment to any such military office."

(2) secs. 64 and 72 A, under which "any person who is a ruler or subject of any State in India" may, subject to rules made under this Act, be nominated as a member of either House of the Indian Legislature or of the Governor's Legislative Councils.

(3) the fact that, in some provinces, in accordance with the recommendations of the Joint Select Committee, the subjects of Native States have been included in the list of voters for candidates for Legislative Councils.

§ 7 **"Every branch of Indian Administration".**

Administration, in the narrowest sense, is the activity of the executive officers of the government. The government administers when it appoints an officer, instructs its diplomatic agents, assesses and collects its taxes, drills its army, investigates a case of the commission of crime, and executes the judgment of a Court. Whenever we see the government in action as opposed to deliberation or the rendering of a judicial decision, there we say is administration. The directions in which this action manifests itself depend upon the position of the state and the duties of the Government.

In the first place India occupies somewhat of an international position, especially so far as the neighbouring Asiatic States are concerned. She is also an original member of the League of Nations; she has, as such, rights and duties over against other states (not to speak of the Native

States within her borders). The management of these relations calls for certain executive action. This action constitutes a branch of Indian administration, *viz., the Administration of Foreign Relations.*

In the second place, India, like all other States, must have means at her command to repel any attempts which may be made against her existence by neighbouring states, or, against peace and order by her own inhabitants. In other words, there must be an army and a navy to protect her. The executive action made necessary by the existence of military and naval forces constitutes another branch of Indian administration, *viz., the Administration of Military Affairs.*

In the third place, the Indian Government has to do something to decide the conflicts which arise between the inhabitants relative to their rights. This duty makes the existence of Courts necessary ; and they, in turn, require executive action, which forms the third branch of Indian administration, *viz., the Administration of Legal and Judicial Affairs.*

In the fourth place, in order that the government may perform all its duties, it must have pecuniary means. The management of financial resources forms another and the fourth branch of Indian administration, *viz., Financial Administration, or the Administration of Financial Affairs.*

The theories of some political philosophers would almost confine the action of government to these branches of administration, but no government was ever so confined by its constitution ; and the Government of India, like every modern state, have recognized that it is their duty to further directly the welfare, both physical and intellectual, of the people. This they do by the formation and maintenance of a system of means of communication, of an educational system, of commercial and industrial organizations, of a system of famine relief, etc. The duties performed by the government in furthering the welfare of the people may be classed together as home or internal affairs ; and the executive action of the government necessitated by the performance of these duties forms the fifth branch of Indian Administration, *viz., the Administration of Internal Affairs.*

These five branches of administration embrace all the functions which the Government is called upon to discharge ; it is needless to point out, of course, that these five branches of Administration may be entrusted to more than five Departments of Government. Thus the Government of India have about a dozen important administrative departments to deal

with— (1) Foreign Affairs, (2) Military Affairs, (3) Home or Internal Affairs, (4) Revenue and Agriculture, (5) Public Works, (6) Commerce, (7) Industries, (8) Railways, (9) Education, (10) Finance, and (11) Law. The administrative departments of the Provincial Governments, of course, are numerically less than those of the Government of India, as their functions are fewer.

### § 8. "Gradual development."

The implication of the word "gradual" is explained in paragraphs 153 and 179 of the Montagu-Chelmsford Report which run thus—

"So far we have tried, without under-estimate or reserve, to set out the difficulties that undoubtedly attend the introduction of responsible institutions into India. They have to be taken into account, and they must lead us to adjust the forms of popular government familiar elsewhere to the special conditions of Indian life. But we have also seen that there is good reason for hope. Free institutions have, as we have said, the faculty of reacting on the adverse conditions in which the start has to be made. The backwardness of education may embarrass the experiment at the outset ; but it certainly ought not to stop it, because popular government in India as elsewhere is sure to promote the progressive spread of education and so a widening circle of improvement will be set up. While, however, we do not doubt the eventual capacity of Indians for self-government, we find it freely and widely admitted that they are not at present ready. Indeed the facts that we have endeavoured to bring out make this obvious. The successful working of popular government rests not so much on statutes and written constitutions as on the gradual building up of conventions, customs and traditions. These are based on the experience and political thought of the people, but are understood and appreciated by both the governed and the Government. Nothing but time can adequately strengthen them to support the strains to which they are exposed. There are examples ancient and contemporary alike to point the moral of the disasters which during a period of transition from official to popular rule may follow from ignoring this fundamental truth." (*M.C. R. para 153.*)

"Indians must be enabled in so far as they attain responsibility to determine for themselves what they want done. The process will begin in local affairs, which we have long since intended and promised to make over to them ; the time has come for advance also in some

subjects of provincial concern ; and it will proceed to the complete control of provincial matters, and thence, in the course of time and subject to the proper discharge of Imperial responsibilities, to the control of matters concerning all India. We make it plain that such limitations on powers as we are now proposing are due only to the obvious fact that time is necessary in order to train both representatives and electorates for the work which we desire them to undertake . and that we offer Indians opportunities at short intervals to prove the progress they are making and to make good their claim, not by the method of agitation but by positive demonstration, to the further stages in self-government which we have just indicated". (*M. C R. para 179*)

### § 9. "Self-governing institutions".

These include the rural and urban self-governing bodies, such as, municipal boards, the district and sub-district rural boards, the village panchayets or other committees, and the Presidency Corporations.

The nature and scope of the changes effected in the character and constitution of local self-governing institutions are fully described in the following paragraphs of the Montagu-Chelmsford Report.—

It is by taking part in the management of local affairs that aptitude for handling the problems of government will most readily be acquired. This applies to those who administer, but even more to those who judge of the administration. Among the clever men who come to the front in provincial politics, there will be some who will address themselves without more difficulty, and indeed with more interest and zeal, to the problems of government than to those of municipal, or district board administration. But the unskilled elector, who has hitherto concerned himself neither with one nor the other, can learn to judge of things afar off only by accustoming himself to judge first of things near at hand. This is why it is of the utmost importance to the constitutional progress of the country that every effort should be made in local bodies to extend the franchise, to arouse interest in elections, and to develop local committees, so that education in citizenship may as far as possible be extended, and everywhere begin in a practical manner. If our proposals for changes on the higher levels are to be a success, there must be no hesitation or paltering about changes in local bodies. Responsible institutions will not be stably-rooted until they become broad-based ; and far-sighted Indian politicians will find no field into which their energies



can be more profitably thrown than in developing the boroughs and communes of their country.

These reasons led Lord Chelmsford's Government in May, 1916, to consider what further progress along the road of local self-government was immediately possible. Their conclusions would have been published some time ago if it had been possible to separate the consideration of this subject from that of constitutional reforms in general. We have the proposals before us, and will summarise the general purport of them.

At present rather more than half the members of municipal and rather less than half of those of rural boards, including in this term sub-district boards, are elected. The intention is that substantial elected majorities should be conceded in boards of both kinds, and that the system of nomination should be retained only in order to secure the necessary representation of minorities, and the presence of a few officials as expert advisers without a vote. Generally the suggestion is that the proportion of nominated members should not exceed one-fourth. The enlargement of the elected element must necessarily be accompanied by the adoption of a sufficiently low franchise to obtain constituencies which will be really representative of the general body of ratepayers. It should also be followed by an extension of the system of elected chairmen. The Decentralization Commission thought that municipal chairmen should ordinarily be elected non-officials, and that if a nominated chairman was required an official should be selected. It is hoped, however, that the election of chairmen will be the general rule in future. If there are special reasons against the election of a non-official chairman, an official might be elected provided he is elected by a majority of the non-official votes. In some provinces this is already the ordinary practice for municipalities. For the administration of large cities it is proposed to approve of the system in which the every-day executive work is carried out by a special nominated commissioner; but not to require that he should be an official provided that he is protected by a provision that he should only be removable with the sanction of Government or by the vote of a substantial majority of the board. In the case of rural boards local Governments will be urged to appoint non-official and preferably elected chairmen wherever possible, but where there is a non-official chairman, there may be need also for a special executive officer, whose appointment and removal would require the Government's sanction, to do the ordinary official work. If any

board desired to elect an official chairman, his election should be by a majority of non-official votes and should be approved by the Commissioner or some higher authority.

The Decentralization Commission recommended that municipalities should have full liberty to impose and alter taxation within the limits laid down by law, but that where the law prescribes no maximum rate the sanction of an outside authority should be required to any increase. It is hoped that nearly all boards will contain substantial elected majorities, and in their case it is proposed to accept the Commission's recommendation, though indebted boards should still obtain the sanction of higher authority before altering a tax. It is clearly important that municipal boards should have such power to vary taxation, and the intention is to give it to rural boards as well by allowing them to levy rates and fees within the limits of the existing Acts. It is thought that wherever a board pays for a service, it should control such service; and that where it is expedient that control should be largely centred in the hands of the Government, the service should be a provincial one. If, for example, a board provides for civil works or medical relief, it ought, subject to such general principles as the Government may prescribe, to have real control over the funds which it provides and not be subject to the constant dictation, in matters of detail, of Government departments. Similarly as regards the control over the budgets of local bodies. It is hoped that provincial Governments will make every effort to give boards a free hand with their budgets, subject to the maintenance of a minimum standing balance, with the necessary reservations in the case of indebtedness or against gross default. The Government of India would discard the system of requiring local bodies to devote fixed portions of their revenues to particular objects of expenditure and would rely on retaining powers of intervention from outside in cases of grave neglect or disregard. Municipalities have already been given enlarged powers in respect of new works; and a similar advance is hoped for in the case of rural boards. As regards the control by Government over the establishment of local bodies, the Commission proposed that the appointment of certain special officers should require the sanction of higher authority, while other appointments would be regulated by general rules laid down by the provincial Government. It is hoped that provincial Governments will now take steps to carry these recommendations into practice, but it is suggested that Government should in the case of the special officers also

retain a right to require their dismissal in cases of proved incompetency. Such material relaxation of Government control in respect of taxation, budgets, public works and local establishments might suggest that the exceptional powers of Government officers in respect of external intervention should, if altered at all, be altered in the direction of greater stringency. But the accepted policy must be to allow the boards to profit by their own mistakes, and to interfere only in cases of grave mismanagement ; and therefore with certain possible exceptions, which we need not here specify, it is not proposed to extend the power of intervention.

Finally the Government of India propose to direct attention to the development of the *panchayat* system in villages. This question was examined by the Decentralization Commission, and has since been the subject of further inquiry in the United Provinces and Assam. It is recognized that the prospect of successfully developing *panchayats* must depend very largely on local conditions, and that the functions and powers to be allotted to them must vary accordingly ; but where the system proves a success, it is contemplated that they might be endowed with civil and criminal jurisdiction in petty cases, some administrative powers as regards sanitation and education, and permissive powers of imposing a local rate. It is hoped that, wherever possible an effective beginning will be made. (*M. C. R. para. 192-196.*) *Vide Resolution on the Local-Self-Government Policy of the Government of India, May 16, 1918: Documents I, pp. 696—718.*

As a matter of fact a beginning has been made in Bengal where, under the wise guidance of H. E. Lord Sinha, "The Bengal Village Self-Government Act" was passed by the Bengal Legislative Council in 1919. This Act empowers the local Government to establish Union Boards in the non-municipal areas of Bengal. These Union Boards consist of an elected majority of members, an elected President and an elected Vice-President. They can appoint and dismiss *Dafadars* and *Chowkidars* and supervise and control them : they are charged with the duty of improving the sanitary condition of their areas by clearing jungles, draining swamps, digging tanks, wells, etc. ; and, for these purposes, they can appoint their own men. They can arrange for suitable places for the burial and cremation of the dead ; they can improve local roads, establish primary schools and run dispensaries. For these purposes they may build up a "Union Fund" by levying rates on owners or

occupiers of premises within their jurisdiction. The Union Boards are also given the power to try minor civil and criminal cases through the agency of "Union Courts". These Unions are thus genuine self-governing institutions—a resuscitation of the village communities of by-gone days.

In commenting on the Declaration of August 20, 1917 in the Imperial Legislative Council on the 5th of September, 1917, H. E. Lord Chelmsford explained that there were three roads along which an advance should be made towards the goal indicated in the above Declaration "Of these the first road was in the domain of local self government, the village or rural board and the town or municipal council. The domain of urban and rural self-government was the great training ground from which political progress and a sense of responsibility have taken their start, and it was felt that the time had come to quicken the advance, to accelerate the rate of progress and thus to stimulate the sense of responsibility in the average citizen and to enlarge his experience".

### §10. "Progressive realisation."

"Progressive realisation" implies successive stages or steps leading to the goal of British policy in India. As stated in the Preamble the three things essential to an advance towards that goal are—

- (1) The gradual development of self-governing institutions in India
- (2) The increasing association of Indians in every branch of Indian Administration
- (3) The giving to the Provinces, the largest measure of independence in Provincial matters of the Government of India which is compatible with the due discharge by the latter of its own responsibilities.

In his speech in the Indian Legislative Council on the 5th of September, 1917, Lord Chelmsford elaborated these points more fully: he said—

"At the very first Executive Council which I held as Viceroy and Governor-General, I propounded two questions to my council—

- (1) What is the goal of British Rule in India?
- (2) What are the steps on the road to that goal?

"We came to the conclusion, which, I trust, most Hon'ble Members will agree, was inevitable - that the endowment of British India as an integral part of the British Empire with self-government was the goal of British Rule, and His Majesty's Government have now put forward in precise terms their policy in respect of this matter, a policy which I may say that we as the Government of India regard in substance as practically indistinguishable from that which we put forward. With regard to the second question, after a careful and detailed examination of the ground, we arrived at the decision that there were three roads along which an advance should be made towards the goal. The first road was in the domain of local self-government, the village, the rural board, and the town or municipal council. The domain of urban and rural self-government is the great training ground from which political progress and a sense of responsibility have taken their start, and we felt that the time had come to quicken the advance, to accelerate the rate of progress, and thus to stimulate the sense of responsibility in the average citizen, and to enlarge his experience.

"The second road, in our opinion, lay in the domain of the more responsible employment of Indians under Government. We felt that it was essential to progress towards the goal that Indians should be admitted in steadily increasing proportion to the higher grades of the various services and departments and to more responsible posts in the administration generally. It is, I think, obvious that this is a most important line of advance. If we are to get real progress, it is vital that India should have an increasing number of men versed not only in the details of everyday administration, but in the whole art of Government.

"I doubt whether there is likely to be anyone who will cavil at the general conclusions at which we arrived as to these two roads of advance ; but agreement must not blind us to their importance. There is no better source of instruction than the liberty to make mistakes. The first and foremost principle which was enunciated in Lord Ripon's Self-Government Resolution of May, 1882, and was subsequently emphasised by Lord Morley and Lord Crewe in their Despatches of 7th November, 1908 and 11th July, 1913, respectively, was that "the object of local Self-Government is to train the people in the management of their own local affairs, and that political education of this sort must take precedence of mere considerations of departmental efficiency." We are in complete

accord with that principle, hence our advocacy of an advance along the first road.

"Equally we realise the paramount importance of training in administration, which would be derived from an advance along the second road. There is nothing like administrative experience to sober the judgment and bring about an appreciation of the practical difficulties which exist in the realm of administration and it is from this source that we may look forward in the future to an element of experienced and tried material for the legislative assemblies.

"We come now to our third road, which lay in the domain of the Legislative Councils. As Hon'ble Members will readily appreciate, there is no subject on which so much difference of opinion exists and with regard to which greater need is required for careful investigation and sober decision. I may say frankly that we as the Government of India recognise fully that an advance must be made on this road simultaneously with the advances on the other two, and His Majesty's Government, in connection with the goal which they have outlined in their announcement, have decided that "substantial steps in the direction of the goal they define should be taken as soon as possible."

The following extracts from the Montagu-Chelmsford Report further explain the meaning of "progressive realisation"—

"The reasons that make complete responsibility at present impossible are likely to continue operative in some degree even after a decade. Within that time many persons will have been brought in touch with the problems of administration and a considerable number will have some experience of the actual exercise of responsibility ; but we recognise that time is necessary for the development of responsibility in the electorates and the growth of proper relations between representatives and constituencies"—(*M. C. R. para 263*).

"Our idea is that as the popular element of the Government acquires experience and learns to discharge its duties efficiently further powers should be entrusted to it. The process will in fact be one of adding to the transferred subjects and of taking from the reserved ones until such time as, with the entire disappearance of the reserved subjects, the need for an official element in the government vanishes and thus the goal of complete responsibility is attained in the provinces" (*M. C. R. para. 360*).

## § 11. "Responsible Government".

On the 14th of May, 1829, Mr. Stanley (afterwards Earl of Derby) presented to the House of Commons a petition which had been agreed to at a meeting held at Yorktown (Toronto) and signed by 2,110 inhabitants of Upper Canada. According to Stanley's speech in presenting the petition, it asked, among other points, for 'a local responsible ministry'. This is commonly held to be the first mention of the term responsible government which subsequently became so familiar. In itself it is a somewhat vague phrase, and in some passages of his Report Lord Durham uses general terms in referring to it. Thus he says that the grant of responsible government would be 'a change which would amount simply to this, that the Crown would henceforth consult the wishes of the people in the choice of its servants ; but in other passages he makes it perfectly clear that he considered the essence of responsible government to be that the executive officers should be subordinate to the Legislature. 'The wisdom of adopting the true principle of representative Government and facilitating the management of public affairs by entrusting it to persons who have the confidence of the representative body has never been recognised in the government of the North American colonies. All the officers of government were independent of the Assembly.' (*Lord Durham's Report*). By responsible government, then, he meant, and all in England and Canada who used the phrase and discussed it meant, constitutional government in the accepted English sense, as constitutional government had been known and preached in England for generations. He meant a political system in which the executive is directly and immediately responsible to the Legislature chosen from the party which includes the majority of the elected representatives of the people. (*Sir C. P. Lucas' Introduction to Lord Durham's Report on the Affairs of British North America, pp. 137-138*).

The introduction of responsible government is inseparably connected with the name of Lord Durham and his report of Jan. 31, 1839, on the condition of Canada whither he went as special commissioner to settle the affairs of the provinces after the abortive rebellions in both upper and lower Canada had proved the bankruptcy of the existing system of government. \* \* \* \* The substantial correctness of his views is shown by the fact that in its essence his exposition of the character of responsible government might be accepted even at the present day : in

rejecting the proposed solution of the constitutional question by the expedient of an elected Executive Council, an idea which has analogies in the early history of English constitutional government, he wrote :—

‘Every purpose of popular control might be combined with every advantage of vesting the immediate choice of advisers in the Crown, were the colonial Governor to be instructed to secure the co-operation of the Assembly in his policy by entrusting its administration to such men as could command a majority, and if he were given to understand that he need count on no aid from home in any difference with the Assembly that should not directly involve the relations between the Mother Country and the Colony.’

No alteration in the conditions laid down in this passage has been made since, the only point in which changes have taken place is with regard to the further and more complete carrying out of the principles which were there enunciated. Lord Durham gives a list of matters in which he considered Imperial interference justified, this list contains only ‘the constitution of the form of Government, the regulation of foreign relations, and of trade with the Mother Country, the other British Colonies and foreign nations, and the disposal of the public lands.’ In all other matters the colonists should have a free hand as they were the most interested in their own administration and legislation and were those on whom the result of unsatisfactory government first recoiled. *Keith's Responsible Government in the Dominions, Vol. I., p. 14.*

The system called responsible government is based on the notion that the head of the state can himself do no wrong, that he does not do any act of State of his own motion, but follows the advice of his ministers on whom the responsibility for acts done, in order to give effect to their volition, naturally falls. They are therefore called Responsible Ministers. If they do wrong they can be punished or dismissed from office without effecting any change in the headship of the State. Revolution is therefore no longer a necessary possibility ; for a change of ministers effects peacefully the desired result. The system is in practice so intimately connected with Parliamentary Government and Party Government that the terms are often used as convertible. The present form of development of Responsible government is that when the branch of the Legislature which more immediately represents the people disapproves of the actions of Ministers, or ceases to have confidence in them, the head of



the state dismisses them, or accepts their resignation, and appoints new ones. The effect is that the actual government of the State is conducted by officers who enjoy the confidence of the people. In practice they are themselves members of the Legislature \* \* \* \* The 'sanction' of this unwritten law is found in the power of the parliament to withhold the necessary supplies for carrying on the business of the Government until the Ministers appointed by the Head of the State command their confidence. In practice, also, the Ministers work together as one body, and are appointed on the recommendation of one of them, called the Prime Minister. And, usually, an expression of want of confidence in one is accepted as a censure of all. This is not, however, the invariable rule; and it is evidently an accidental and not a fundamental feature of Responsible Government.—*Sir Samuel Griffiths, Notes on Australian Federation, 1896, pp. 17-18.*

Responsible government means party government. The executive officers are chosen from the party which has gained a majority at the last General Election. They sit in one or other of the two Houses of Parliament, and they are in effect controlled by the elected House, the House of Commons, or rather the dominant party in that House. This is the English system; the English view of political liberty involves the subordination of the Executive power to the Legislature. Responsible government in the British colonies dates from Lord Durham's mission to Canada in 1838 and his Report of 1839.—*Sir C. P. Lucas's "The British Empire", pp. 168-169.*

The illustrious authors of the Montagu-Chelmsford Report (para 189) understand "Responsible Government" to mean "first that the members of the executive government should be responsible to, because capable of being changed by, their constituents; and, secondly, that these constituents should exercise their power through the agency of their representatives in the assembly. These two conditions imply in their completeness that there exist constituencies based on a franchise broad enough to represent the interests of the general population, and capable of exercising an intelligent choice in the selection of their representatives; and secondarily, that it is recognised as the constitutional practice that the executive Government retains office only so long as it commands the support of a majority in the assembly."

"The essence of Responsible Government," said Lord Derby, "is that mutual bond of responsibility to Parliament one for another, wherein

a Government acting by party go together, frame their measures in concert and where, if one member falls to the ground, the others almost as a matter of course fall with him." From the above description of Responsible Government it follows that Responsible Government is practically synonymous with Parliamentary Government as it prevails in Great Britain and her colonies the successful working of such a system of Parliamentary Government depends on the existence of well-organized political parties.

By a political party we mean a more or less organized group of citizens who act as a unit. They share, or profess to share, the same opinions on public questions, and by exercising their voting power towards a common end, seek to obtain control of the Government. Though standing almost outside the legal structure of the state, party government is the vital principle of its existence. The natural division into parties for political purposes would seem to be multiple, not dual—whether the parties are based on similarity of convictions or on community of interests. The decisive impulse towards a permanently dual organization of parties appears to be given by the desire to carry elections—specially elections in which the Supreme Executive is directly or indirectly appointed

The classic theory of parties in England is thus well stated by May—"The parties in which Englishmen have associated have represented cardinal principles of government—authority on the one side, popular rights and privileges on the other. The former principle pressed to extremes, would lead to absolutism,—the latter, to a republic: but, controlled within proper limits, they are both necessary for the safe working of a balanced constitution. When the parties have lost sight of these principles in pursuit of objects less worthy, they have degenerated into factions."

Essential to the working of the party system, run on the English lines, would thus seem to be, firstly, a general agreement on certain fundamental principles of supreme importance, and secondly, a willingness to ignore really trifling points of difference in order to attain those great ends for which a parliamentary party is organized.

The system of Responsible Government, in its perfection, thus seems to imply that :—

- (a) at the head of the Government is a person in whose name all

executive acts are done, and who is irresponsible to, and irremovable by, the legislature ;

(b) his acts are done by the advice, and on the responsibility, of ministers chosen nominally by him, but really by the representatives of the people, usually but not necessarily, from among the members of the Legislature ;

(c) the representatives are, therefore, through the agents whom they select, the true government of that country ;

(d) when the representative assembly ceases to trust these agents (or ministers), the latter (unless they dissolve the legislature) resign, and a new set is appointed ;

(e) the executive as well as the legislative power thus belong to the party having a majority in the representative chamber ;

(f) as the Legislature is thus in a sense the Executive, so the Executive Government—the Council of Ministers or Cabinet—is in so far Legislative that the initiation of measures rests very largely with them.

(g) The Legislature and the Executive settle their disputes without reference to the judiciary.

## § 12. "British India".

The Indian law codes contain two definitions of cardinal importance. One is "British India", the other "India". "British India" means all places and territories within the King's dominions which are governed by him through the Governor-General in Council. "India" includes British India "together with any territories of any native prince or chief under the suzerainty of His Majesty, exercised through the Governor-General in Council". "British India" is under direct British rule, the portion outside British India—which yet is India—is not under direct British rule. It is occupied by native princes or chiefs whose position as regards the Crown is that of an inferior power to the suzerain or paramount power—*Sir T. W. Holderness*.

The expression "British India," as defined above, includes the land down to low-water mark, and would ordinarily include the territorial waters of British India, though not the high seas beyond (R. V. Edmestone, (1879), 7 Bom. Cr. Ca. 109). Aden is part of British India, and is included in the Bombay Presidency.—*Ilbert*.

## § 13. "As an integral part".

In his Minute of Dissent, Sir C. Sankaran Nair explains the significance of these words in the following way —

"The policy of His Majesty's Government has been announced to be the progressive realization of responsible government in India as an integral part of the British Empire. Some critics are apparently of opinion that this means the complete, though gradual, transfer of control from Parliament to legislatures in India. The words that India should be 'an integral part of the British Empire' appear to me to forbid such an interpretation. As long as India remains an integral part of the British Empire, the paramountcy of Parliament must be recognized and maintained."

From another point of view the authors of the Montagu-Chelmsford Report show how as the result of the liberalizing process of the Constitutional Reforms, India's connection with the Empire will be confirmed by the wishes of her people —

"The experience of a century of experiments within the Empire goes all in one direction. As power is given to the people of a province or of a Dominion to manage their own local affairs, their attachment becomes the stronger to the Empire which comprehends them all in a common bond of union. The existence of national feeling, or the love of, and pride in, a national culture need not conflict with, and may indeed strengthen, the sense of membership in a wider commonwealth. The obstacles to a growth in India of this sense of partnership in the Empire are obvious enough. Differences of race, religion, past history, and civilisation have to be overcome. But the Empire, which includes the French of Canada and the Dutch of South Africa—to go no further—cannot in any case be based on ties of race alone. It must depend on a common realisation of the ends for which the Empire exists, the maintenance of peace and order over wide spaces of territory, the maintenance of freedom and the development of the culture of each national unity of which the Empire is composed. These are aims which appeal to the imagination of India, and in proportion as self-government develops patriotism in India, we may hope to see the growth of a conscious feeling of organic unity with the Empire as a whole." (*M. C. R. para. 180.*)

## § 14 "Empire".

The word "Empire" is responsible for much misunderstanding: we are obliged to use it, because we have no other single word which would cover the many and diverse dominions of His Majesty the King. But Empire to many, possibly to most Englishmen, implies military domination, despotic rule, aggression on other's liberties. This does not represent the facts. Canada and Australia belong to the British Empire and are proceed to belong to it, yet nowhere in the world is liberty, government of the people by the people for the people, more fully developed. But, inasmuch as words count for something, it is worth noticing, first that the Latin word from which Empire is derived was not a purely military term, and secondly that when the word first comes into English history it is used to denote not *domination* but *independence*. A celebrated statute was passed in the reign of King Henry VIII, which laid down that "this realm of England is an Empire." The statute was passed against paying dues to the Papal See; and the meaning of the words Empire and Imperial, as explained by the great commentator, Blackstone, was "that our king is equally sovereign and independent within these his dominions, as any emperor is in his empire." Empire denoted the spiritual and temporal independence of England and it may fairly be said that, at the present day, British Empire connotes British liberty.

The British Empire is not an Empire of continuous subject provinces, like unto the Empires of which we read in history such as Alexander conquered, only to fall to pieces at his death; or even such as the Romans won by force of arms, for the Romans had no little of the qualities which have given the English success. It is a growth resulting in a combination of communities, to an extraordinary degree diverse from one another in climate, in product, in population, and even in their governmental organization: it is an empire of endless diversities.—*Sir C. P. Lucas's "The British Empire."*

Compilers of geographical manuals assure us that the Britannic Empire comprising the British Isles, British India, and the colonies and Federations has a larger area and population than either Russia or the United States of America; that it includes nearly one quarter of the geographic land surface, more than one-sixth of the inhabitable surface, and a larger proportionate part of the inhabitant, of the globe,—facts capable of being stated in another form by saying that if the Empire

together with a marine area similarly proportionate to the marine area of the globe, could be constituted as a separate planet, such a planet would be of size intermediate between Mercury and Mars, and would have a population comparatively denser than that of the earth; that Canada alone is nearly as large as Europe, and thirty times as large as the United Kingdom; that Australia and New Zealand together are larger than Canada; that the British Asiatic provinces are nearly half as large as Europe, and contain a population more than three-fourths that of Europe; and much more to the same effect. Large allowances of various kinds must be made before drawing any conclusions from any such comparisons. The distinctive eminence and character of the Britannic Empire depend less on advantages capable of expression in figures than on special circumstances of position and distribution; on its traditions of a great historic part and anticipations, amounting to certainty, of a great future; on the singular energy with which its economic resources have been and are being developed; on the varied individuality, in their social and political aspects, of the members which compose it; and on a pervading and sustaining sense of cohesion among those members inspired partly by common interests, partly by participation in the blessings of order and liberty derived from a common source and partly by consciousness of the weight which their union gives them collectively in the affairs of the world at large.—*E. J. Payne's "Colonies and Colonial Federations", 1—2.*

In the course of his concluding speech on the third reading of the Government of India Bill (Dec. 5, 1919) the Rt. Hon. Mr. Montagu gave the following exposition of the concept of Imperialism —

"I never had more than one conception of Imperialism in my mind, and that was that there could be no pride or pleasure in a Crown Colony, no pride or pleasure in domination or subordination, no pride or pleasure in flying the British flag for the benefit of British trade but that the only Imperialism that was worth having was a trusteeship which was intended to develop the country under the British flag into a partnership in the Commonwealth"

Almost in a similar strain Sir Donald Maclean thus spoke in the House of Commons in the course of the debate on the third Reading of the Government of India Bill (Dec. 5, 1919)—

"I would say to those Hon. Friends of mine who are afraid of the future of India within the circle of the British Dominions across the

seas this one thing. If we wish to retain India within the British Empire we must not be afraid of development and change. We shall never keep her unless we thoroughly grasp that fact. What has been, after all, the great fundamental differentiation between the British Empire and other empires? It is this, that we have not, with all our faults—and there are many, as the pages of history very clearly disclose—really sought to govern great tracts of the earth's surface for the selfish purposes of this country. The other policy was the policy which brought down to dust all the empires in the past. I believe what I have stated is the sole reason why we find the British Empire still strong and, as I believe, going from strength to strength \* \* \*. I believe there is no fear of India leaving the ambit of the British Empire so long as we fully and adequately and in time recognise, that we must give to India, growing as she is in knowledge and intelligence and self-consciousness, that self-government by which alone we can keep her along with us marching on the road of the world's progress. The Indian Empire has often been described as the finest jewel in the British Crown. It will flash more brightly and be increasingly resplendent in exact accordance with our application of that great principle to which I referred a little while ago."

### 15. "Progress"

"The Bill attempts—and I submit successfully attempts—to provide for progress. It legislates for a transition from bureaucratic to self-government. And the progress is to be effected by the simple means of gradually enlarging the field made over to the administration of Ministers by the gradual transfer of more and more subjects to their administration until at length the time arrives when there are no subjects remaining *reserved*. I have said more than once that I make no attempt to predict the date when that consummation will be reached. Obviously it cannot arrive until you have throughout India a widely diffused and trained electorate capable of formulating clear and wise conceptions of policy and of selecting representatives who will be capable of guiding and voicing the view of the population at large"—*Lord Sinha's speech in the House of Lords*.

"Progress must depend on the growth of electorates and the intelligent exercise of their powers; and men will be immensely helped to

become competent electors by acquiring such education as will enable them to judge of candidates for their votes, and of the business done in the councils." (*M. C. R. para 188*).

*See Notes on "Progressive realisation" above.*

## 16. "This policy."

*See Notes on "Declared policy" above.*

## 17. "Successive Stages."

By the plan of the Act of 1919 there may be as many stages as one likes. Additional powers are to be transferred to Ministers by stages. "If at the end of ten years the Commission of Investigation says that Indians in a Province have mismanaged their affairs it is perfectly simple to give them no more power. It will be quite possible, and it is intended under the Bill, to take from them some of the powers transferred by this Bill. You can make the stages as quick, as short, as slow, and as long as you like, until the moment comes when, in any given Province, the Indian statesmen and Legislative Council have shown their complete ability to cover the whole field of Government that law and order, and police, can be transferred to them"—*Lord Selborne's speech in the House of Lords*.

Changes in the mode of government to be healthy, lasting and for the good of the people must be like the growth of the human body or constitution. Hence follows the well-known maxim—"Constitutions are not made, but grow." The idea is that the constitution of a good, progressive country does not change all at once, but changes and grows step by step—by successive and graduated stages. If it grows at once and at a bound, it does not last but dies from premature growth. A form of Government can be said to be settled and stable only if it has grown from a root by gradual process of development. That is how the British Constitution has grown. Its changes in the direction of democratic government have been never sudden or hasty but always slow and gradual; that is the process also along which the Indian Constitution ought to grow, if it is to be based on stable foundations. "In all great efforts, specially in those relating to the political growth of a people the first step is the most important, because it is the first step taken well, loyally and joyfully, that determines the fate of the advance. Our easy and rapid realization of full self-government as the goal of these reforms must, therefore,



depend on what we make of this first step of those reforms by a willing spirit of steady effort, co-operation, mutual confidence, constructive work, and not mere destructive criticism"—*Sir Narayan Chandrasekar in his pamphlet on "The New India."*

"The announcement of August 20 postulated that such stages could be found ; indeed, unless we can find them, it is evident that there is no other course open than at some date or other to take a precipitate plunge forward from total irresponsibility to complete responsibility."—(*M. C. R. para 241*).

### § 18. "Substantial Steps."

The Indian Reforms Act of 1919 (*i. e.* the Government of India Act, 1919) provides for the taking of the first "substantial steps" towards the goal of British policy in India as defined in the Declaration of August 20, 1917. The main features of the constitutional changes are fully described in the Introduction to this volume, in the notes under the several sections, and in Lord Sinha's speech in the House of Lords (Dec. 11, 1919) on the Second Reading of the Government of India Bill, 1919 (printed in Part II of this volume).

### § 19. "Time and Manner."

The Act provides for the appointment of a Statutory Commission ten years after the passing of the Act to enquire into "the working of the system of government, the growth of education, and the development of representative institutions" in British India, and to "report as to whether and to what extent it is desirable to establish the principle of responsible government, or to extend, modify or restrict the degree of responsible government then existing therein, including the question whether the establishment of second chambers of the local legislatures is or is not desirable." The "time and manner" of each advance is to be determined by Parliament after each decade on the advice of these Statutory Commissions.

In the old days of the East India Company, it was Parliament's habit before renewing the Charters to hold a regular inquest into Indian administration. That practice lapsed since 1858 and is being revived by the Act of 1919.

## § 20 "Upon whom responsibility lies etc"

In moving for leave to bring in the first Bill for the Better Government of India (February 12, 1858) Viscount Palmerston delivered a speech in which he showed the necessity for the acceptance by Parliament of responsibility for the welfare and advancement of the Indian peoples : he said—

I say then, that as far as regards the executive functions of the Indian Government at home, it is of the greatest importance to vest complete authority where the public have a right to think that complete responsibility should rest, and that whereas in this country there can be but one governing body responsible to the Crown, to Parliament, and to public opinion consisting of the constitutional advisers of the Crown for the time being, so it is in accordance with the principles and practice of our constitution, as it would be in accordance with the best interests of the nation, that India, with all its vast and important interests, should be placed under the direct authority of the Crown, to be governed in the name of the Crown by the responsible Ministers of the Crown sitting in Parliament, and responsible to Parliament and the public for every part of their public conduct.

## § 21. "Such matters."

These evidently refer to (1) the increasing association of Indians in every branch of Indian administration, (2) the gradual development of self-governing institutions, and (3) the time and manner of each advance.

## § 22. "Those."

"Those" include (a) the persons on whom administrative burdens will devolve, specially the Ministers, (b) the elected members of the several legislative councils, (c) the general body of the electorate.

## § 23. "New opportunities of Service."

Political capacity can only come through the exercise of political responsibility ; and the growth of education must be accompanied by new opportunities of service (*M. C. R., para. 188.*) See Notes under no. 5 above.

## § 24. "Sense of responsibility."

"Responsibility" here primarily implies the amenability of ministers to an electorate and to an assembly. But it also implies a real perception of the public welfare as something apart from, and with superior claims to, the individual good, and an active effort to maintain "the essential standards of a just and generous Government." A clear exposition of what the "sense of responsibility" implies is given in the following extract from the Montagu-Chelmsford Report.—

"Let us remember what the working of responsible institutions in their typical form involves. The electors send men to the councils with power to act in their name, and the councils commit power to ministers, over whom they reserve control in the form of the power of removing them from office. The elector controls his Government, because if his representative in council supports ministers of whom he disapproves he can at the next election change his representative. The system presupposes in those who work it such a perception of, and loyalty to, the common interests as enables the decision of the majority to be peaceably accepted. This means that majorities must practise toleration and minorities patience. There must, in fact, be not merely a certain capacity for business but what is much more important, a real perception of the public welfare as something apart from and with superior claims to, the individual good. The basis of the whole system is a lively and effective sense of the sanctity of other people's rights." (*M. C. R. para. 131.*)

## § 25. "And whereas concurrently."

This paragraph of the Preamble embodies the policy laid down in the second formula of the Montagu-Chelmsford Report (paragraph 189)—"The Provinces are the domain in which the earlier steps towards the progressive realisation of responsible government should be taken. Some measure of responsibility should be given at once, and our aim is to give complete responsibility as soon as conditions permit. This involves at once giving the Provinces the largest measure of independence, legislative, administrative and financial, of the Government of India, which is compatible with the due discharge by the latter of its own responsibilities." This formula which thus links together the two questions of provincial independence of the Government of India and the growth of responsible government in the Provinces, is based on recogni-

tion of the principle laid down in an earlier paragraph of the M. C. Report (para. 188) that "in proportion as control by an electorate is admitted, control by superior authority must be relaxed."

### § 26. "Gradual Development."

*See notes under no. 8 above.*

### § 27. "Self-Governing Institutions."

*See Notes under no. 9 above.*

### § 28. "The Provinces of India."

British India is made up of nine major provinces and six lesser charges. The former comprise Madras, Bombay, Bengal, the United Provinces, the Punjab, Bihar and Orissa, the Central Provinces, Assam and Burma. The six minor charges are the North-West Frontier Province, British Beluchistan, Coorg, Ajmer, the Andamans and Delhi. Madras and Bombay grew into governorships out of the original trading settlements. Sind was added to the latter soon after its conquest in 1843.

"The original presidency of Bengal was elevated from a governorship to a governor-generalship by the Act of 1773. We have explained how India then consisted of the three presidencies only, and how military and political exigencies led to a great extension of the Bengal presidency to the North-West. Later legislation relieved the Governor General by empowering him to create the lieutenant governorship of the North-West Provinces in 1836, and further to rid himself of the direct administration of Bengal, including Bihar and Orissa, by creating the lieutenant governorship of Bengal. The Punjab was the next province formed. Annexed in 1849, it was governed first by a board of administration and then by a chief commissioner. After the mutiny Delhi was transferred to it and it became a lieutenant governorship. Oudh was annexed in 1856 and placed under a chief commissioner, whose office was merged in that of the lieutenant governor of the North-West Provinces in 1877. The North-West Provinces and Oudh were re-named the United Provinces of Agra and Oudh in Lord Curzon's time. Lower Burma was formed into a chief commissionership in 1862; Upper Burma was added in 1886 and the province became a lieutenant governorship in 1897. The

Central Provinces, formed out of portions of the North-West Provinces and certain lapsed territories, were placed under a chief commissioner in 1861. In 1903 Berar, which had long been under British administration, was taken over on a perpetual lease from the Nizam and linked to the Central Provinces. Assam, annexed in 1826, was added to Bengal, from which it was again severed and made a chief commissionership in 1874. In 1905 the partition of Bengal converted the eastern half of the province together with Assam into one lieutenant governorship under the name of Eastern Bengal and Assam, and the western half into a second lieutenant governorship under the name of Bengal. This arrangement was modified in 1912: Assam became once more a chief commissionership, Bengal a presidency, and Bihar and Orissa a lieutenant governorship. The North-West Frontier Province was created for purposes of political security in 1901 by detaching certain Punjab districts. British Beluchistan was formed into a chief commissionership in 1887. Coorg was annexed in 1834 and is administered by the Resident in Mysore. Ajmer, ceded in 1818, is similarly administered by the Agent to the Governor General in Rajputana. The Superintendent of the penal settlement of Port Blair administers the Andamans and Nicobar Islands as chief commissioner. Delhi comprises a small area enclosing the new capital city, which was created a separate province under a chief commission on the occasion of the King Emperor's Durbar in 1911." *M. C. R.*

### § 29. "Provincial Matters."

Provincial matters relate to subjects in which, to use the words of the Government of India Memorandum, "the interests of the provinces essentially predominate", and in which Provincial Governments are, therefore, to have "acknowledged authority of their own". (*Functions Report, para 12*).

Prior to the passing of the Government of India Act the Government of India retained in their own hands matters relating to foreign relations, the defences of the country, general taxation, currency, debt, tariffs, posts, telegraphs and railways; and ordinary internal administration, the assessment and collection of revenues, education, medical and sanitary arrangements, irrigation, buildings and roads, fell to the share of the provincial governments. But in all these matters the Government of India exercised a general and constant control, and laid down lines of general policy.

Under sec. 45A of this Act, however, provisions have been made by rules for the classification of subjects as Central and Provincial subjects. *For fuller details see Notes under Sec. 45A.*

### § 30 "Independence of the Government of India".

Prior to the passing of the Government of India Act, 1919, the Provincial Governments acted as mere agents of the Government of India who exercised a very full and constant check over their proceedings. The position of the provincial governments was well described by the late Sir Herbert Risley in his evidence before the Royal Decentralization Commission in the following words—"The Local Governments were never sovereign and independent. From 1833 up to the time of the Strachey decentralisation, the Government of India had everything in their hands, and no Local Government could create the smallest appointment without sanction. Since then the Government of India has surrendered many functions, but each surrender requires a separate order, since the residuary authority rests with the Government of India and not with the Local Governments, as is the case in most federations."

In spite of the surrender of functions by the Government of India ever since the eighties of the last century the control of the Government of India over the Provincial Governments was exercised in the following way before the Reforms Act came into operation—

(1) By financial rules and restrictions, including those laid down by Imperial departmental Codes ;

(2) By general or particular checks of a more purely administrative nature, which may (a) be laid down by law or by rules having the force of law, or (b) have grown up in practice.

(3) By preliminary scrutiny of proposed Provincial legislation, and sanction of Acts passed in the Provincial legislatures ,

(4) By general resolutions on questions of policy, issued for the guidance of the Provincial Governments. These often arise upon the reports of commissions or committees, appointed from time to time by the Supreme Government to investigate the working of departments with which the Provincial Governments are primarily concerned.

(5) By instructions to particular Local Governments in regard to matters which may have attracted the notice of the Government of India in connection with the departmental administration reports periodically submitted to it, or the proceedings-volumes of a Local Government.

(6) By action taken upon matters brought to notice by the Imperial Inspectors-General

(7) In connection with the large right of appeal possessed by persons dissatisfied with the actions or orders of a Provincial Government.

In order to lessen the amount of control hitherto exercised over the Provincial Governments and to give them, in provincial matters, "the largest measure of independence of the Government of India" rules are to be framed under sec. 45A of this Act "for the devolution of authority in respect of provincial subjects to local governments", and for the transfer among the provincial subjects of subjects to the administration of the governor acting with ministers." (*For further details see Notes under Sec. 45A.*)

"Our business is one of devolution", says the Montagu-Chelmsford Report, "of drawing lines of demarcation, of cutting long-standing ties. The Government of India must give and the provinces must receive : for only so can the growing organism of self-government draw air into its lungs and live" (*M. C. R. para 120*).

The policy underlying this scheme of devolution was foreshadowed as early as 1911 in the following memorable paragraph in the Coronation Durbar Despatch to the Secretary of State for India from Lord Hardinge's Government—"The only possible solution of the difficulty would appear to be gradually to give the Provinces a larger measure of self-government, until at last India would consist of a number of administrations autonomous in all provincial affairs, with the Government of India above them all, and possessing power to interfere in cases of mismanagement but ordinarily restricting their functions to matters of imperial concern." (*Documents I, p. 454*). The Government of India Act of 1919 and the Rules made thereunder only effect such constitutional changes as will help in the realization of this policy of continuous devolution of powers till the Provinces become, in provincial matters, independent of the Government of India. But the Government of India, so long as it is responsible to Parliament and not to the Indian legislature—must retain such powers over the Provinces as will enable them to discharge their obligations to Parliament.

### § 31. "Government of India."

The official acts of the Central Government in India are expressed to run in the name of the "Governor-General in Council," often described

as "the Government of India." Legislative sanction for the name of "Government of India" is given by the Indian General Clauses Act [Act X of 1897 s. 3 (22)]. The functions of the Government of India have been thus described in the Report of the Royal Commission upon Decentralization in India, 1909 —

"The functions of the Government in India are, in many respects, wider than in the United Kingdom. The Government claims a share in the produce of the land ; and save where (as in Bengal), it has commuted this into a fixed land tax, it exercises the right of periodical re-assessment of the cash value of its share. In connection with its revenue assessments, it has instituted a detailed cadastral survey and a record of rights in the land. Where its assessments are made upon large landholders, it intervenes to prevent their levying excessive rents from their tenants ; and in the Central Provinces it even takes an active share in the original assessment of landlords' rents. In the Punjab, and some other tracts, it has restricted the alienation of land by agriculturists to non-agriculturists. It undertakes the management of landed estates when the proprietor is disqualified from attending to them by age, sex or infirmity, or occasionally, by pecuniary embarrassment. In times of famine it undertakes relief works and other remedial measures upon an extensive scale. It manages a vast forest property, and is a large manufacturer of salt and opium. It owns the bulk of the railways of the country, and directly manages a considerable portion of them ; and it has constructed, and maintains, most of the important irrigation works. It owns and manages the postal and telegraph systems. It has the monopoly of note issue, and it alone can set the mints in motion. It acts, for the most part, as its own banker, and it occasionally makes temporary loans to Presidency Banks in times of financial stringency. With the co-operation of the Secretary of State it regulates the discharge of the balance of trade as between India, and the outside world, through the action of the India Council's drawings. It lends money to municipalities, rural boards and agriculturists, and occasionally to the owners of historic estates. It exercises a strict control over the sale of liquor and intoxicating drugs, not merely by the prevention of unlicensed sale, but by granting licenses for short periods only, and subject to special fees which are usually determined by auction. In India, moreover, the direct responsibilities of Government in respect to police, education, medical and sanitary operations, and ordinary public works, are of a much wider scope than



in the United Kingdom. The Government has further very intimate relations with the numerous Native States which collectively cover more than one-third of the whole area of India, and comprise more than one-fifth of its population. Apart from the special functions narrated above, the government of a sub-continent containing nearly 18,00,000 square miles and 300,000,000 people, is in itself an extremely heavy burden, and one which is constantly increasing with the economic development of the country and the growing needs of populations of diverse nationality, language and creed."

*See Notes under Part IV of the Act.*

### § 32. "Its own responsibilities."

Pending the development of responsible government in the provinces the Government of India must remain responsible only to Parliament. In other words, in all matters which it judges to be essential to the discharge of its responsibilities for peace, order and good government it must retain indisputable power and be accountable to Parliament. In a special sense, the Government of India have, and will continue to have, supreme responsibility for India's relations with her great Asiatic neighbours, and for the security of six thousand miles of land frontiers and nine thousand miles of sea-board. "The defence of India is an Imperial question ; and for this reason the Government of India must retain both the power and the means of discharging its responsibilities for the defence of the country and to the Empire as a whole." (*M. C. R. para. 158*).

### § 33. "By the King's most Excellent Majesty."

The enacting words, showing the authority by which the Indian Constitution is created, are in the form in which Acts of Parliament have been framed from a remote period of English history. According to the theory of the Constitution the King is the source of law, the King makes new laws, alters or repeals old laws, subject only to the condition that this supreme power must be exercised in Parliament and not otherwise. Every Act of Parliament bears on its face the stamp and evidence of its royal authority. It springs from the King's Most Excellent Majesty. It is in the Crown, and not in Parliament that legislative authority is, according to constitutional theory, directly vested. Parliament is the body assigned by law to advise the Crown in matters of legislation and the

Crown could not legally legislate without the advice and consent of Parliament. "It is, however, constitutionally and theoretically true that the legislative function resides in Queen Victoria no less than it resided in William the Conqueror. The conditions and limitations under which that power is exercisable have indeed been profoundly modified." (*Hearn's Government of England*, p. 51).

### § 34. "Lords Spiritual and Temporal."

*See notes under no. 4 above.*

### § 35. "Commons."

*See notes under no. 4 above.*

### § 36 "By the authority of the Same"

These words clearly show that although, on the face of the Act, the king figures as the chief legislator, the *Auctoritas* by which the constitution has been created is blended and conjoined in the king in Parliament. This is the modern practice in connection with the political organization of colonies and in the grant to them of the institutions of self-government. It should be remembered however, that in the early stages of British colonization, the Crown, without parliamentary sanction, expressed or implied, but in the exercise of its admitted prerogative, was accustomed to grant to newly settled, ceded or conquered provinces, patents and charters, containing directly or indirectly authority to establish local legislative Assemblies endowed with the power to pass laws for the peace, order and good government of such countries.—*Quirk and Carran*.

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## PART I.

# Home Government.<sup>1</sup>

### THE CROWN.<sup>2</sup>

1. The territories for the time being vested<sup>3</sup> in His Majesty in India are governed by and in the name of His Majesty the King, Emperor of India<sup>4</sup>, and all rights<sup>5</sup> which, if the Government of India Act, 1858<sup>6</sup>, had not been passed, might have been exercised by the East India Company<sup>7</sup> in relation to any territories, may be exercised by and in the name of His Majesty as rights<sup>8</sup> incidental to the government of India.

Government of India  
by the Crown. [1858 ss.  
1, 2].

### § 1 "Home Government."

"Home Government" means the highest executive authorities in England exercising the fullest measure of control over the central and local governments in India. These include the Crown, Parliament, the Secretary of State and the Council of India. "The principal functions of the Home Government," said J. S. Mill many years ago, "is not to direct the details of administration, but to scrutinise and revise the past acts of Indian Governments, to lay down principles and issue general instructions for their future guidance, and to give or refuse sanction to great political measures which are referred home for approval." This is as true in 1920 as it was in the days when these words were written.

The stages in the growth of the present system of "Home Government" are succinctly described in the following paragraphs of the Montagu-Chelmsford Report—

"The process by which Indian affairs became a matter of national concern was slow and gradual. At first the Company's settlers were responsible only to the Directors, who derived their powers of control from Charters given them by the Crown. There was then no question of sovereignty or territorial administration. But when the battle of Plassey compelled the Company to assume the task of reconstructing Bengal, the astonishing position was created that a few commercial agents were handling the revenues of a kingdom in the name of an emperor. The Company's peril of bankruptcy was the immediate cause of Parliament's first intervention ; but a more powerful motive was the growing feeling in England, to which the opulence and arrogance of officials returning from India contributed, that the nation must assert its responsibility for seeing that the new and vast experiment of ruling a distant and alien race was properly conducted."

*First intervention by Parliament.*—"The beginnings of Parliamentary control are seen in Lord North's Regulating Act which created and named the first Governor-General and Council. But further appointments were still left to the Directors, with whom also the home management remained. Parliament's first attempt to provide for the ordering of Indian affairs has been condemned with some reason as violating the first principles of administrative mechanics. It created a Governor-General, who was powerless before his own council, and an executive that was powerless before a supreme court, itself immune from all responsibility for the peace and welfare of the country—a system that was made workable only by the genius and fortitude of one great man. Such a structure could not have lasted, and the Act of 1781 swept away some of its worst anomalies. Meantime the facts that Indian territories were becoming involved in European wars and that from the struggle the Company was emerging as the strongest power in the land made Parliament resolve to strengthen its control. Committees were appointed which reported adversely on the administration ; and on their reports resolutions were carried requiring the recall of Warren Hastings and the closer definition of the Governor-General's powers. The Directors defied Parliament and retained Hastings. Fox introduced his Bill, which was defeated, thanks to George III's famous intervention ; and Pitt, at the age of twenty-five, reformed the constitution of India."

*The Board of Control* :—"Pitt's Act of 1784 set up as the supreme executive authority six parliamentary Commissioners for the Affairs of

India, known more generally as the Board of Control, and thereby instituted the dual system of government by the Company and by a parliamentary Board which endured till after the Mutiny. From Lord Cornwallis' time onwards we may take it that all administrative acts of the Governor-General in Council, including annexations of territory, were done with the sanction of the national Government. The Company survived : the Directors still had great powers of patronage and also the direction of the ordinary home business ; but before every renewal of the Company's charter Parliament made a practice of holding an exhaustive inquiry into the Indian administration. The most famous of these inquests is that which resulted in the Fifth Report of 1812. Meanwhile the indefinite dominion derived from Moghul sources in the form of the *Diwani* (or revenue administration) of Bengal, Bihar and Orissa was gradually overlaid by new sovereignty derived from Parliament. The Act of 1813, while continuing the Company in actual possession, asserted the sovereignty of the Crown over its territories ; and the Act of 1833 declared that they were held in trust for His Majesty. It also directed that all Indian laws and also the reports of the newly-instituted Law Commissioners should be laid before Parliament. Finally, in 1853, the right of patronage was taken from the Directors and exercised under rules made by the parliamentary Board of Control. We must not conclude, however, that the supremacy of the President of the Board of Control left the Directors with no real power. Their position was still a strong one ; the right of initiative still rested ordinarily with them ; they were still the main repository of knowledge ; and though the legal responsibility lay with Government, they exercised to the last a substantial influence upon details of administration."

"When the Indian Mutiny of 1857 sealed the fate of the greatest mercantile corporation in the world, the powers previously wielded both by the Court of Directors and by the parliamentary Board of Control passed to the Secretary of State for India." The principle on which this transfer of control was made is thus described by Viscount Palmerston—"The principle of our political system is that, all administrative functions should be accompanied by ministerial responsibility—responsibility to Parliament, responsibility to public opinion, responsibility to the Crown, but in this case the chief functions in the Government of India are committed to a body not responsible to Parliament, not appointed by the Crown, but elected by persons who have no more

connexion with India than consists in the simple possession of so much India Stock \* \* \* I say, then, that as far as regards the executive functions of the Indian Government at home, it is of the greatest importance to vest complete authority where the public have a right to think that complete responsibility should rest, and that whereas in this country there can be but one governing body responsible to the Crown, the Parliament, and to public opinion, consisting of the constitutional advisers of the Crown for the time being, so it is in accordance with the best interests of the nation, that India, with all its vast and important interests, should be placed under the direct authority of the Crown, to be governed in the name of the Crown by the responsible Ministers of the Crown sitting in Parliament, and responsible to Parliament and the public for every part of their public conduct, instead of being, as now, mainly, administered by a set of gentlemen who, however respectable, however competent for the discharge of the functions entrusted to them, are yet a totally irresponsible body, whose views and acts are seldom known to the public, and whether known or unknown, whether approved or disapproved, unless one of the Directors happens to have a seat in this House, are out of the range of Parliamentary discussion."

There is thus much in the existing system of "Home Government," which has its origin in arrangements suited to the control by the East India Company of its commercial operations in a distant land. "These operations led to the exercise by the Company of governmental powers, in regard to which Parliament from an early date asserted its supremacy. The interaction of the two forces had by 1858 produced a constitution which may shortly be described as follows.—The executive management of the Company's affairs was in the hands of a Court of Directors, who were placed in direct and permanent subordination to a body representing the British Government and known as the Board of Control. The functions of the Board were in practice exercised by the President, who occupied in the Government a position corresponding to some extent to that of a modern Secretary of State for India. The Board of Control were empowered 'to superintend, direct and control all acts, operations, and concerns which in anywise relate to the civil or military government or revenues of the British territorial possessions in the East Indies' (24 Geo. III., sess. 2, c 25). Subject to the superintendence of the Board of Control, the Directors conducted the

correspondence with the Company's officers in India, and exercised the rights of patronage in regard to appointments."

"The transference of the administration of India to the Crown in 1858 was effected by the Act for the Better Government of India 21 & 22 Vict., c. 106, which has regulated the Home administration of India since that year, and of which the main provisions were re-enacted in the consolidated Government of India Act, 1915-16. In general, the dual functions of the Board of Control and the Court of Directors were vested in the corporate body known as the Secretary of State for India in Council. The substitution of administrative responsibility on the part of the Government for the superintendence it had formerly exercised caused a redistribution of functions in which the lines of inheritance became to some extent obscured; but the persistence of the dual principle can still be traced in the corporate activities of the Secretary of State in Council."

—*Crewe Committee's Report.*

*See notes under Sec. 3 on Parliamentary Control over Indian Officers.*

## § 2 "The Crown."

The word "Crown" means an ornamental badge of regal power worn on the head by Sovereign princes. The word is frequently used when speaking of the Sovereign himself, or the rights, duties, and prerogatives belonging to him.

By the English "Interpretation Act" "references to the Sovereign reigning at the time of the passing of the Act or to the Crown shall, unless the contrary intention appears, be construed as references to the Sovereign for the time being." The Crown is thus synonymous with the Sovereign who may be a King or a Queen. In official documents the King is described as—

'George, by the Grace of God of the United Kingdom and Ireland and of British Dominions beyond the Seas, King, Defender of the faith, Emperor of India.'

He holds office for life, subject to the conditions of the Act of Settlement which requires that he shall be a descendant of Princess Sophia of Hanover, a Protestant member of the Church of England, and married only to a Protestant. The rule of succession is hereditary, following the law of primogeniture.

"The King can do no wrong." His ministers are responsible personally for his public acts. In his private capacity "he cannot inflict an injury on a subject, nor is he personally amenable to the procedure of

any court of law." The only remedy against the Sovereign personally is by Petition of Right which is available only in cases in which the Sovereign's title to lands or goods is disputed. It is held to be of the Sovereign's mere grace and free will that the proceedings are allowed. The petition is granted in the form—"Let Right be done," and then the investigation follows the course of an ordinary civil trial before the superior courts of law.

Parliament cannot be assembled, adjourned or dissolved except by his express command. At the commencement of a new Parliament, he delivers, either in person or by a commission duly authorized for that purpose, a speech declaring the cause of the summons, giving a general, though not very definite, sketch of the sort of measures which his Ministers will introduce into Parliament in the course of the session, and noticing briefly any important facts in current foreign politics or in the domestic annals of the Royal Family.

Bills passed by the Houses of Parliament must receive the assent of the Sovereign in order to become a law. But "since the time of Queen Anne no English king has ever refused assent to a Bill. For, under the modern constitutional rule, the King must, in matters such as this, act in accordance with the advice of his ministers, and his ministers can practically prevent any bills, which in their opinion ought not to become law, from reaching the stage at which the king's assent is required."—*Ilbert*.

The Sovereign can formally express his wishes by means of Orders in Council or Proclamations, but these are only made subject to the assent of Parliament and are revocable by statute. At the present day all Proclamations derive their ultimate authority from Parliament. In case of emergency, the ministry would advise the Crown to issue a Proclamation on its own authority and would endeavour to pass a Bill of Indemnity as soon as Parliament met.\*

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\* In 1766 Lord Chatham's ministry interfered by Proclamation with the export of wheat, in order to meet the scarcity caused by a bad harvest. When Parliament met, an Act of Indemnity was passed after 'acrimonious debates.' Again, in 1876, it was only after a heated debate in the House of Commons that the Proclamation issued by H. I. M. Queen Victoria before the passing of the Royal Titles Bill announcing her assumption of the title of "Empress of India" was ratified by Parliament. Once again, on March 16th, 1915, the House of Lords voted an Address to the Crown asking that the Royal consent should be withheld from the Proclamation (for the creation of an Executive Council for the United Provinces) which had, according to the Indian Councils Act of 1909, been laid on the tables of the House of Lords. It is evident, therefore, that those Proclamations which have not been questioned by Parliament or superseded by Acts of Parliament have behind them the full authority of Parliamentary sanction.



He has sole power of coming money, of appointing all officers in the army and navy, judges, ambassadors, the Governors-General of India, Canada, the Australian Commonwealth, and the Union of South Africa, Colonial and Indian Governors, bishops and archbishops of the Established Church. He has the power of vetoing all Acts of Colonial and Indian legislatures. He has sole power of granting Charters (as Queen Elizabeth did to the East India Company in 1600) and degrees of nobility, of concluding treaties of any kind, of making war and peace with foreign states and of granting pardon to any particular offender. He has also sole command of the army and the navy.

Briefly speaking, the Sovereign "is at the same time the supreme executive, a co-ordinate legislative authority, the fountain of justice and of honour, the supreme governor of the church, the commander-in-chief of the army and navy, the conservator of the peace, and the *parens patriae* and *ex-officio* guardian of the helpless and the needy. In law all land is held directly or indirectly, of him. Parliament exists only by his will." Lastly we should note that the Crown is the symbol of imperial unity as Professor Lowell has pointed out, "the Crown is the only visible symbol of the union of the Empire and this has undoubtedly had a considerable effect upon the reverence felt for the throne."

Thus we see how the powers and prerogatives of our King-Emperor are far wider than those exercised by the heads of many powerful civilised states of to-day. "It would very much surprise people," as Bagehot remarked in his incisive way, "if they were told how many things the Queen could do without consulting the Parliament. \* \* \* Not to mention other things, she could disband the army (by law she cannot engage more than a certain number of men, but she is not obliged to engage any man); she could dismiss all officers, from the general commanding in chief downwards. She could dismiss all the sailors too, she could sell off all our ships of war and all our naval stores; she could make a peace by the sacrifice of Cornwall, and begin a war for the conquest of Brittany. She could make every citizen in the United Kingdom a peer; she could make every parish in the United Kingdom a university; she could dismiss most of the civil servants; she could pardon all offenders. In a word the Queen could by prerogative upset all the action of civil government within the government."

*Statutory Powers of the Crown over Indian administration* :—If we examine the positive powers that are vested in our King-Emperor by the

Government of India Act, we shall find how vast and wide they are, and how intimately they are bound up with the good government of the country.

The territories for the time being vested in India are governed by, and in the name of, His Majesty the King-Emperor of India (sec. 1) ; and the revenues of India are received for and in the name of His Majesty. [sec. 20 (1)].

I. His Majesty, by warrant under the Royal Sign Manual,

(a) appoints (1) the Governor-General of India, (s. 34), (2) members of the Governor-Generals' Executive Council (s. 36), (3) the Governors of Presidencies of Bengal, Bombay and Madras [s. 46 (2)], (4) the Governors of the five provinces viz., the United Provinces, the Punjab, Bihar and Orissa, the Central Provinces and Assam after consultation with the Governor-General [s. 46 (2)], (5) the members of the Governors' Executive Council [s. 47 (1)], (6) Advocates-General for the Presidencies of Bengal, Madras and Bombay [s. 114 (1)].

(b) counter-signed by the Chancellor of the Exchequer, appoints an Auditor of Indian Accounts in the United Kingdom [s. 27 (1)] and grants pensions and gratuities to any member on the establishment of the Secretary of State in Council. (s. 18)

† (c) counter-signed by the Secretary of State, grants pensions to Bishops out of the Revenues of India (s. 120).

II. His Majesty may, by Letters patent (a) establish a High Court of Judicature in any territory in British India (s. 113), (b) amend, from time to time, the letters patent establishing or vesting jurisdiction, powers or authority in a High Court [s. 106 (1A.)], (c) appoint the Bishops of Calcutta, Madras and Bombay [s. 118 (1)], (d) determine the functions and jurisdiction of Indian Bishops [s. 115 (1)], (e) vary the limits of the dioceses of Calcutta, Madras and Bombay.

III. His Majesty appoints the Chief Justices and other Judges of High Courts who hold office during His Majesty's pleasure. (ss. 102, 105).

IV. His Majesty's sanction is necessary for (a) the constitution of new Governors' Provinces or placing part of a Governor's Province under the administration of a Deputy Governor (s. 52 A.), (b) constituting a new Province under a Lieutenant-Governor [s. 53 (2)], (c) transferring an entire district from one province to another [s. 60 (1)], (d) constituting a new local legislature [s. 77 (1)].

V. His Majesty's approval is necessary (a) for the appointment of a Lieutenant Governor [s. 54 (1)] and the members of his Executive Council [s. 55 (3)], (b) for the names of persons to act as members of the Statutory Commission under Sec. 84 A (s. 84 A).

VI. His Majesty's assent is necessary before an Act passed by the certifying power of the Governor-General or of a Governor can have effect. [s. 67B (2) & 72E (2)].

VII. His Majesty may signify to the Secretary of State in Council his disallowance of any order of the Governor-General in Council altering the local limits of jurisdiction of High Courts [s. 109 (3)].

VIII. His Majesty (a) may remove any member of the Council of India on an address of both Houses of Parliament; (b) fixes the number of members of the Governor-General's Executive Council [s. 36 (2)]; (c) makes such rules as to the leave of absence of the Bishops of Calcutta, Madras and Bombay as seemed expedient to him.

IX. (a) Every person in the Civil Service of the Crown in India holds office during His Majesty's pleasure [s. 96 B (1)]. (b) nothing in this Act shall derogate from any rights vested in His Majesty in relation to the Government of India. [s. 131 (1)]; (c) all treaties made by the East India Company so far as they are in force at the commencement of this Act are binding on His Majesty (s. 132).

### § 3 "Territories for the time being vested."

The Act of 1813, while continuing the East India Company in actual possession, asserted the sovereignty of the Crown over its territories; and the Act of 1833 declared that they were held in trust for His Majesty. In sec. 1 of the Act of 1833 and in sec. 22 of the Indian Councils Act of 1861 the expression was "the territories *now* under the dominion of Her Majesty"; this gave rise to questions as to the applicability of those sections to territories *subsequently acquired*. Sec. 3 of the Indian Councils Act of 1892 expressly declared the applicability of the above-mentioned sections of the Acts of 1833 and 1861 to territories subsequently acquired.

### § 4 "Emperor of India."

In 1876 the transfer of the Government of India from the Company to the Crown, which had been effected eighteen years earlier, was further recognised by an Act of Parliament (39 & 40 Vict. c. 10) which empowered

the Queen to make a significant addition to her style and title. The circumstances which led to the passing of this statute are thus related by LADY BETTY BALFOUR in her book entitled "*Lord Lytton's Indian Administration.*"

"When the Administration of India was transferred from the East India Company to the Sovereign, it seemed in the eyes of her Indian subjects and feudatories that the impersonal power of an administrative abstraction had been replaced by the direct personal authority of a human being. This was a change thoroughly congenial to all their traditional sentiments, but without some appropriate title the Queen of England was scarcely less of an abstraction than the Company itself. \* \* \* The title of Empress or *Bādshāh* could alone adequately represent her relations with the states and kingdoms of India, and was moreover a title familiar to the natives of the country, and an impressive and significant one in their eyes."

"Embarrassments inseparable from the want of some appropriate title had long been experienced with increasing force by successive Indian administrators, and were brought, as it were, to a crisis by various circumstances incidental to the Prince of Wales's visit to India in 1875-76, and by a recommendation of Lord Northbrook's Government that it would be in accordance with fact, with the language of political documents, and with that in ordinary use to speak of Her Majesty as the Sovereign of India—that is to say, the paramount power over all, including Native States."

"It was accordingly announced in the speech from the Throne in the session of 1876, that whereas, when the direct Government of the Indian Empire was assumed by the Queen, no formal addition was made to the style and titles of the Sovereign, Her Majesty deemed that moment a fitting one for supplying the omission, and of giving thereby a formal and emphatic expression of the favourable sentiments which she had always entertained towards the princes and people of India."

To fulfil Her Majesty's desire the Royal Titles Act (39 & 40 Vict. c. 10.) was passed in the same year (1876). With a view to the recognition of the transfer of the Government of India to the Crown, it authorised the Queen, by Royal Proclamation, to make such addition to the style and titles appertaining to the Imperial Crown of the United Kingdom and its dependencies as to Her Majesty might seem meet. Accordingly, the Queen, by Proclamation dated April 28, 1876, added to her style and

titles the words "INDIE IMPERATRIX" or "EMPRESS OF INDIA" (*London Gazette*, April 28, 1876) and thenceforth "Empeior of India" formed part of the title of Her Successors.

### § 5. "Rights exercised by the East India Company."

These rights were the rights of control and direction exercised by the East India Company, or by the Court of Directors, or Court of Proprietors of that Company, either alone, or by the Direction or with the sanction of the Commissioners for the Affairs of India or the Board of Control. *For fuller details see notes under "East India Company" below.*

### § 6. "The Government of India Act, 1858."

The Government of India Act of 1858 declared that henceforth "India shall be governed by and in the name of" the Queen, and vested in the Queen all the territories and powers of the Company. A Secretary of State was appointed, with a Council of 15 members, to transact the affairs of India in England. Vacancies in the Council of India could be filled up by the Secretary of State. The term of office was "during good behaviour." No member of Council was capable of sitting in Parliament. The Secretary of State was empowered to divide the Council into Committees for the more convenient transaction of business, and to appoint one of the members to be Vice-President. Except in certain cases specially mentioned, the Secretary of State was not bound to follow the opinion of the majority of the Council, but he must record his reasons for acting in opposition thereto. In cases of urgency he might act without consulting the Council; and as regards that class of cases which formerly had passed through the Secret Committee of the Court of Directors, he was expressly authorised to act alone without consulting the Council or recording his reasons. All the revenues of India were subjected to the control of the Secretary of State, who might sanction no grant without the concurrence of the majority of the Council. The accounts were to be audited in England, and annually laid before Parliament. Any order sent to India directing the commencement of hostilities must also be communicated to Parliament. Except for repelling actual invasion, or "under other sudden and urgent necessity," the revenues of India might not be applied to defray the expense of any military operation beyond the frontier without the consent of both Houses of Parliament. The naval and military forces of the

Company were declared to be thenceforth the forces of the Crown ; all officers and servants of the company in India were to be officers of the Crown ; and all future appointments were vested in the Crown. Appointments to the offices of Governor-General, Governors of Presidencies and Advocate-General, and also (by 32 and 33 Vict. ch. 97) of the ordinary members of the Councils in India, were to be made direct ; appointments to the offices of Lieutenant-Governor or other ruler of a Province by the Governor-General, subject to the approval of the Crown, and other appointments made in India remained as before.

The *Act for the Better Government of India* received the Royal Assent on the 2nd of August, 1858, and came into operation thirty days later. Its effect, so far as regards the assumption of the government by the Crown, was announced to the Princes and People of India by a Proclamation of the direct supremacy of the British Crown. This Proclamation, "simple and natural enough as it appears at the present day in the light of what has followed, was a stroke of genius at the time. 'It sealed the unity of Indian Government and opened a new era.' It was the act of a great Sovereign Mother which appealed to oriental sentiment as nothing else could have done. An entirely new keynote was struck. Her Majesty directed her Minister to issue the great announcement, 'bearing in mind that it is a female Sovereign who speaks to more than a hundred millions of Eastern people on assuming the direct government over them and, after a bloody war, giving them pledges which her future reign is to redeem and explaining the principles of her government.' 'Such a document,' said Her Majesty, 'should breathe feelings of generosity, benevolence and religious toleration, and point out the privileges which the Indians will receive in being placed on an equality with the subjects of the British Crown.' It was the greatest event in a long history of great things. Now for the first time on record the whole of the vast continent of India, greater in extent than Europe itself, excluding Russia, acknowledged not only the hegemony of a single power, but the guardianship of a single person".\*

This memorable Proclamation, justly called the *Magna Charta of India*, was published at every large town throughout the Country and translated into the vernacular languages. In this historic Proclamation the Governor-General (Lord Canning) was for the first time styled "Viceroy".

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\*"The Historical Record of the Imperial Visit to India, 1911" p. 5.

## 7. "The East India Company."

On December 31st, 1600, Queen Elizabeth granted a charter to two hundred and fifteen English Knights, Aldermen and Burgesses for a term of fifteen years by the name of the "Governor and Company of merchants of London trading with the East Indies." The Company had the following privileges under the Charter—(a) to use any trade route and to have an exclusive right of trading (between the Cape of Good Hope and the straits of Magellan), with power to grant licenses to trade, unauthorised traders being liable to forfeiture of all their belongings and to other penalties, (b) to make reasonable "laws, constitutions, orders and ordinances" not contrary or repugnant to the laws, statutes or customs of the English realm—for the good government of the Company and its affairs; (c) to impose such fines or penalties as might be necessary for enforcing these laws.

Thus it will appear that the Company had the monopoly of the trade with all countries lying between the Cape of Good Hope and the Straits of Magellan. Pursuit of trade was the object of the Company's existence for a century and a half. Its monopoly was continued by successive Charters of the Stuart monarchs as also by Cromwell. "Trading relations were instituted with Masulipatam on the East and Surat on the West coast in the years 1611 and 1612. Madras was rented from a local Raja in 1639. Bombay was ceded by Portugal to the British Crown as part of the dower of Catherine of Braganza in 1661, and granted in 1668 to the East India Company to be held of the Crown 'as of the Manor of Greenwich in free and common soccage.' Leave to trade with Bengal was obtained from the Moghal emperor in 1634; the factory at Hooghly was established in 1640, and Calcutta owes its foundation to the events of 1686, when Job Charnock was forced to quit Hooghly by the Deputy of Aurangzeb and settled further down the river. The Revolution of 1688 imperilled the position of the old or London Company. It had to struggle for its privileges with a new English company and after several years of contention the two were amalgamated by Lord Godolphin's award of 1702 as the 'United Company of Merchants Trading to the East Indies' commonly known as 'The East India Company.'

"This Company, though not, for a long time, under the direct control of the Crown, became, in the eighteenth century, mixed up with Government loans, for which it undertook responsibility, in return for a grant or

recognition of its monopoly of the trade to India ; though the validity of the Crown's claim to grant such monopoly was more than doubtful. Partly to protect its traders and their rich 'forts' or settlements on the coast (Calcutta, Madras, and Bombay) from attacks by the native princes, partly to enable its members to hold their own against the efforts of other European traders (French, Dutch, and Portuguese), the East India Company was allowed to raise and maintain a considerable army, the control of which was entirely in its own hands. Very naturally, the Company was drawn into the constant rivalries and quarrels of the native rulers some of whom were shrewd enough to see the advantage of enlisting its valuable aid on their side. In the year 1765, the Company became, in effect, a great territorial power by the grant, from the great Moghul, of the Diwani, or right of collecting taxes nominally due to that feeble ruler, and of administering justice, in Bengal, including Bihar and Orissa."

"Hitherto the direct action of the Crown in India had been confined to the establishment of courts of justice for the British settlers, a personal rather than a territorial exercise of authority ; but the acquisition of the Diwani was quickly followed by a period in which the Crown, though still declining to undertake direct Government in India, acted as a controlling and inspecting authority over the Company's administration. This was done, first, under the provisions of Lord North's 'Regulating Act' of 1773, which established a Governor-General at Calcutta, in control of the three former 'Presidencies' of Calcutta, Madras, and Bombay with a Council to advise him, not only in executive but in legislative matters, and a Supreme Court at Calcutta, exercising jurisdiction over British subjects, and, in some cases, natives ; while the "*Court of Directors*" of the Company was made to report on financial and other matters to the Treasury and the Secretary of State."

"The scheme of 1773 was soon superseded by a scheme introduced by Pitt in 1784 which established a regular '*Board of Control*' in London, consisting of the Chancellor of the Exchequer, a Secretary of State, and four other Privy Councillors of whom one became 'President of the Board of Control' and, virtually, Minister for India. Under this scheme, the powers of the Court of Proprietors or share-holders in the Company were greatly reduced, while those of the Court of Directors and the Company's officials in India were placed under the close supervision of the Board of Control and the Governor-General respectively. The Company was in fact, rapidly losing its



commercial character, as the actual conduct of trade passed into private hands, and as rapidly acquiring the character of a Government Department with vast responsibilities and machinery. In the year 1813, it was deprived of its trade monopoly (except as to the tea trade with China) though merchants still required its licence to trade in India. Its charter was renewed in 1833; but the great territorial possessions which, by that time, the Company had acquired, were declared by it to be held in trust for the Crown; and its commercial monopoly and control over private traders were abolished. On the renewal of the Company's charter in 1853, the Crown encroached further on the independence and influence of the Company, by bringing the enormous official patronage it had hitherto exercised, under Regulations of the Board of Control; and the final step was taken when, after the suppression of the Indian Mutiny a great Act of Parliament of the year 1858 definitely brought the Company's territories within the dominions of the Crown; the territories formerly under the control of the East India Company were vested in the Crown; and all the powers and liabilities by treaty or contract, of the East India Company, as well as the old Board of Control, passed to a newly created Secretary of State for India"—*Jenks's "The Government of the British Empire," pp. 81—84*

An Act of 1873 (36 Vict. c. 17) formally dissolved the East India Company from January 1. 1874.

### § 8. "Rights incidental."

One of these rights inherited by the Government of India from the East India Company is the power to cede territory. This power was granted to the Company by the Charter of 1758. "It expressly granted to the Company power, by any treaty of peace made between the Company, or any of their officers, servants, or agents, and any of the Indian princes or Governments, to cede, restore, or dispose of any fortresses, districts, or territories, acquired by conquest from any of the Indian princes or Governments during the late troubles between the Company and the Nabab of Bengal, or which should be acquired by conquest in time coming, subject to a proviso that the Company should not have power to cede, restore, or dispose of any territory acquired from the subjects of any European power without the special licence and approbation of the Crown. This power has been relied on as

the foundation, or one of the foundations, of the power of the Government of India to cede territory"—*Ilbert*, p. 36, *Lachmi Narayan vs. Raja Pratab Singh*, 2 All. 1.

## THE SECRETARY OF STATE,

2. (1) Subject to the provisions of this Act, the Secretary of State<sup>1</sup> has and performs all such or the like powers and duties relating to the government or revenues of India,<sup>2</sup> and has all such or the like powers over all officers appointed or continued under this Act, as, if the Government of India Act, 1858,<sup>3</sup> had not been passed, might or should have been exercised or performed by the East India Company,<sup>4</sup> or by the Court of Directors or Court of Proprietors of that Company, either alone or by the direction or with the sanction or approbation of the Commissioners for the Affairs of India,<sup>5</sup> in relation to that government or those revenues and the officers and servants of that Company, and also all such powers as might have been exercised by the said Commissioners alone.

(2) In particular, the Secretary of State may, subject to the provisions of this Act, "or rules made thereunder," superintend, direct and control all acts, operations and concerns which relate to the government or revenues of India, and all grants of salaries, gratuities and allowances, and all other payments and charges, out of or on the revenues of India,

(3) "The salary of the Secretary of State<sup>6</sup> shall be paid out of moneys provided by Parliament, and the salaries of his Under-Secretaries and any other expenses<sup>7</sup> of his department may be paid out of the revenues of India or out of moneys provided by Parliament."

[1919, s. 30]

### § 1. "The Secretary of State."

The authority of the Crown over India is exercised in England by "the Secretary of State." This section speaks of "the Secretary of State" because in the eye of English constitutional law, the office of the Secretary of State is a unit, and any Secretary of State is, theoretically, capable of discharging the duties of any other. "When I say 'Secretary of State,'" said the Earl of Derby, "I must add that, although the name which may be given to the head of the Indian Government may not be a matter of much importance, we thought that in the formation of such an office it would be more advisable and more in conformity with constitutional practice to give the name of Secretary of State to a high officer upon whom Her Majesty is pleased to devolve the exercise of duties under her Royal sanction. As regards the colonies and foreign affairs, so as regards India, the same title is given to the presiding officer, as there will be this additional convenience, though not at first contemplated, that either of the Secretaries of State will be able to sign papers and perform duties in the absence of the Secretary of State for India."

This theory was practically given effect to during the absence of the Rt. Hon. Mr. Montagu, the Secretary of State for India, from England in the winter of 1917-18. The Cabinet was of opinion that the following would suffice as a temporary expedient.—Despatches to India required the signature of the Secretary of State but any Secretary of State might act for another and despatches were signed by Mr. Long, another Secretary of State. Most of the powers of the Secretary of State were exercised by the Secretary of State in Council, and as the Act provided for meetings of the Council in the absence of the Secretary of State, the Council continued to sit weekly, the Vice-President presiding. Urgent questions of the first importance were decided by the Cabinet. He is

assisted by two Under-Secretaries, one permanent, who is a member of the Civil Service, the other parliamentary, who changes with the government.

We should remember in this connection that the position of the Secretary of State for India is different from that of the Secretary of State for the Colonies. In Canada and in the other dominions the Executive Government is, as in India, vested in the Crown, but the administration is entrusted to the Governor-General or Governor, and not to the Secretary of State who owes his actual authority solely to the fact that the Crown acts on his advice ; in India, on the contrary, there is a duplication of authority . the superintendence, direction and control of the civil and military government of India is vested in the Governor-General in Council, but he is required to pay due obedience to all such orders as he may receive from the Secretary of State, and the Secretary of State, again, may superintend, direct and control all operations and concerns which relate to the government of India and to its revenues. In another respect also the position of the Secretary of State for India differs from that of the Colonial Secretary of State, *viz.* that the Secretary of State for India has a council to advise and correct him—but the Secretary of State for the Colonies has none. The Secretary of State for India is a member of either House of Parliament, a Cabinet Minister and a Privy Councillor. To understand his position clearly we should know something about the Ministry, the Cabinet and the Privy Council.

*The Ministry*—The word "Ministry" is of wider meaning than the word "Cabinet." The Ministry consists of all those executive officers who have seats in Parliament. It is composed of an inner part that formulates the policy of government and an outer part that follows the lines laid down ; the inner part is the cabinet which contains the more prominent party leaders who are also holders of the principal offices of state ; while the outer part consists of the heads of the less important departments, the parliamentary Under-Secretaries, the whips\* and the officers of the royal household. But all of them are not members of the Cabinet. The pre-war Cabinet consisted of 21 persons ; but besides these there were 33.

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\* "The whips are the agents through whom party machinery is used for the conduct of the business of the House. They are the eyes and ears of their party chief. It is their business to try and discern the direction in which sections of opinion are moving, to hear any mutterings of discontent, and to suggest methods for mitigating or removing it."—*Ibert, Parliament*, p. 153.

non-cabinet ministers in Parliament. These latter are the "political officers" who are expected to resign their offices when the cabinet is defeated in the House of Commons. The ministry is formed in the following way : the King sends for the recognised leader of the political party which has the majority in the House of Commons and asks him to form a Ministry. If this leader thinks that his party will approve of his assuming such a responsibility, he accepts the commission, and, usually after due consultation with other prominent members of his party, gives to the sovereign a list of the men whom he recommends for appointments to the chief offices of State. These the Sovereign appoints and commissions as a matter of course. They are always men chosen from among members of both Houses of Parliament, and generally because they have proved their ability to lead there. The leader chosen by the Sovereign to form the ministry stands at its head when formed and is customarily known as the Prime Minister.

*Relations of the Ministry to the Crown* :—For each *public* act of the Crown the responsibility lies with a minister. (For *private* acts of the Crown, such as correspondence with related monarchs, marriages etc. ministers are not responsible.) Though ignorant of the matter at the time it occurred he becomes answerable if he retains his post after it comes to his knowledge. The rule is so universal in its operation "that there is not a moment in the King's life, from his accession to his demise, during which there is not some one responsible to Parliament for his public conduct." (*Todd*.) A minister is now politically responsible for everything that occurs in his department, whether counter-signature or seal is affixed by him or not ; and all the ministers are jointly responsible for every highly important political act.

The King has to follow the advice of his Ministers. It is said that he might disregard their advice if he could find others who were willing to adopt his policy and assume responsibility for it. Such an alternative is a very remote possibility in England to-day. It could only be brought about in one of two ways—

(a) He might dismiss the ministry. This right to dismiss a ministry, although unquestionably within the prerogative of the Crown, seems to be regarded as one of those powers which the close responsibility of the Cabinet to the House of Commons has practically made obsolete. Circumstances, however, might arise in which it is evident that the Ministry

and the House of Commons no longer represented the opinion of the country and the Crown might, by dismissing a ministry, force a dissolution and appeal to the electorate

(b) The other way in which a change of ministry could be brought about by the Crown would be by a refusal to consent to some act which the ministry deemed essential to their remaining in office.

Unhampered by the advice of his ministers the Crown chooses the Premier who, in his turn, chooses his colleagues and is responsible for their selection. These ministers direct the action of the Crown in all matters relating to the government and are completely responsible for all political acts done by the Crown during their tenure of office.

According to the earlier theory of the constitution the ministers were the counsellors of the king. It was for them to advise and for him to decide. Now the position is almost reversed. The king is consulted, but the ministers decide. It is now commonly said that, with the Crown, influence has been substituted for power; or, as Bagehot puts it in his own emphatic way, the Crown has "three rights—the right to be consulted, the right to encourage, and the right to warn. And a king of great sense and sagacity would want no others."

We should here refer to two immemorial customs of the constitution. The first is that the ministers must not bring the King's name into political controversy in any way or refer to his personal wishes in argument either within or outside the Parliament. The second is that the Sovereign is absent from Cabinet meetings. His absence has, indeed, had three distinct effects—(a) it has helped to free the individual members of the Cabinet from royal pressure; (b) it has made it easier for them to act as a unit in their relation to the Crown; and (c) it has tended to remove him from the discussion of public policy until it has been definitely formulated.

*Ministerial Responsibility.*—If the ministers are defeated on any important measure in the House of Commons, or if any vote of censure is passed upon them in that House, they must resign,—such is the command of precedent,—and another ministry must be formed which is in accord with the new majority. The Ministers must resign together because the best form of responsibility for their conduct of the Government can be secured only when their measures are taken in concert, and the House of Commons would be cheated of all real control of them

if they could, upon each utterance of its condemnation of an Executive Act, or upon each rejection by it of a measure proposed or supported by them, 'throw overboard' only those of their number whose departments were most particularly affected by the vote, and so keep substantially the same body of men in office. If a defeated or censured ministry think that the House of Commons in its adverse vote has not really spoken the opinion of the constituencies, they can advise the Sovereign to dissolve the House and order a new election; that advice must be taken by the Sovereign; and the ministers stand or fall according to the disposition of the new House towards them.—*Woodrow Wilson*.

*The Cabinet*.—Prof. Dicey has said "that while the Cabinet is a word of every-day use, no lawyer can say what a cabinet is". Bagehot, however, has undertaken to define the Cabinet. He calls it, first, "a board of control chosen by the legislature, out of persons whom it trusts and knows, to rule the nation;" and, again, he designates it, "as a combining committee, a hyphen which joins, a buckle which fastens, the legislative part of the state to the executive part of the state." Professor Gneist calls the Cabinet the council of ministers, *i.e.*, those members of the Privy Council who are the heads, for the time being, of the executive departments.

The Cabinet is thus a Secret Committee of the Privy Council composed of the heads of the executive departments, selected from among the members of both Houses of Parliament belonging to the party in the House of Commons dominant for the time being and jointly and severally responsible to it. It does not consist invariably of the same number of ministers. The Cabinet usually consists of twenty-one ministers viz.—(1) Lord High Chancellor, (2) Lord President of the Council, (3) Lord Privy Seal, (4) First Lord of the Treasury, (5) First Lord of the Admiralty, (6-10) five Secretaries of State (Home, Foreign, Colonies, India and War), (11) Chancellor of the Exchequer, (12) Secretary for Scotland, (13) Chief Secretary to the Lord-Lieutenant of Ireland, (14) Post-Master-General, (15-18) four Presidents of Committees of the Privy Council (Board of Trade, Local Government Board, Board of Agriculture, Board of Education), (19) Chancellor of the Duchy of Lancaster, (20) First Commissioner of Works, (21) Attorney-General. During the out-break of the Great War, however, several new temporary ministries were created.

The position and functions of some of these high officers of State have now to be explained.

*The First Lord of the Treasury* :—This office is now invariably held by the Prime Minister. The holder of it receives £5000 year. It is within the choice of the Prime Minister to hold another office, if he wills. He usually chooses to occupy the office of First Lord of the Treasury, because the official duties of that place are nominal only and leave him free to exercise his important functions as leader of the party in power. He selects the members of the ministry in the way previously explained. "It is said, and truly, that the Prime Minister is unknown to the law ; no salary is attached to the office, if office, it can be called ; the term does not occur in any Act of Parliament, nor in the records of either House. In two formal documents only does he find place. Lord Beaconsfield described himself in the Treaty of Berlin as Prime Minister of England ; and on December 2, 1905, King Edward VII by Royal Proclamation gave place and precedence "to our Prime Minister, next after the Archbishop of York." (*Anson*.)

The Prime Minister has considerable patronage at his disposal. He exercises a general supervision over all departments of State. He decides differences between two or more Cabinet ministers, his decision being subject to a possible appeal to the whole Cabinet. He stands between the Cabinet and the Crown—It is he who acts as the connecting link with the Cabinet as a whole and communicates to the Crown their collective opinion. To such an extent is the Prime Minister the representative of the Cabinet that whereas the resignation of any other minister creates only a vacancy, the resignation of the Premier dissolves the Cabinet altogether. Finally, the Prime Minister must keep a careful watch on the progress of all government measures ; and he is expected to speak, not only on all general questions but on all the most important government bills.

*The Lord High Chancellor*,—is the most notable officer in the whole system. He is president of the House of Lords, of the Court of Appeal, of the High Court of Justice, of the Chancery Division of the High Court, and he is a member of the Judicial Committee of the Privy Council, and he actually sits in all these except the High Court—in the House of Lords and the Privy Council always, and in the Court of Appeal often. More singular still, he is the political officer of the law ; he is member always of the Cabinet ; and like the other members, belongs to a party and goes in or out of office according to the favour of the House of Commons exercising, while in office, the functions of a Minister of Civil Justice. Important and unique as the position of



the Lord Chancellor is, he is the most highly paid officer of the Crown in England, his salary being £10,000 per annum.

*The Five Secretaries of State*—Five of the great departments to-day represent the product of a curious evolution of the ancient Secretariat of State. Originally there was but a single official who bore the designation of Secretary of State. In the earlier eighteenth century a second official was added, although no new office was created. At the close of the century a third was added, after the Crimean War a fourth, and after the Indian Mutiny of 1857 a fifth (*viz.* the Secretary of State for India). There are now, accordingly, five "principal Secretaries of State," all in theory occupying the same office and each, save for a few statutory restrictions, competent legally to exercise the functions of any or all of the others.\* In practice each of the five holds strictly to his own domain. The group comprises (1) the Secretary of State for the Home Department, assisted by a parliamentary under-secretary and a large staff of permanent officials, and possessing functions of a highly miscellaneous sort—those, in general, belonging to the ancient Secretariat which have not been assigned to the care of other departments; (2) the Secretary of State for Foreign Affairs, at the head of a department which not only conducts foreign relations but administers the affairs of such protectorates as are not closely connected with any of the Colonies; (3) the Secretary of State for the Colonies; (4) the Secretary of State for War, and (5) the Secretary of State for India.

*The Administrative Boards*.—The heads of a variety of administrative boards or commissions are very commonly admitted to the Cabinet, though sometimes they are not of the Cabinet. Two—the Board of Trade and the Board of Education—originated as committees of the Privy Council. Three others—the Board of Agriculture, the Board of Works and the Local Government Board—represent the development of administrative commissions not conceived of originally as vested with political character. All are in effect independent and co-ordinate governmental departments. At the head of each Board is a President (save that the Chief of the Board of Works is known as First Commissioner) and the membership embraces the Five Secretaries of State and a variable number of other important dignitaries. This

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\* A recent example will illustrate this theory. During the absence of Rt. Hon'ble Mr. Montagu, the Secretary of State for India, another Secretary of State signed all despatches for India for him.

membership is but nominal. No one of the Boards actually meets, and the work of each is performed entirely by its president with, in some instances, the assistance of a parliamentary under-secretary. "In practice, therefore, these boards are legal phantoms that provide imaginary colleagues for a single responsible minister."

*The Privy Council.*—Is nominally an assembly of advisors to the Crown. Its main duty now is to advise the Crown as to the issue of ordinances, which are known on that account to the English law as Orders in Council. During the last hundred years the Council has been nominated by the Sovereign on the advice of the ministers. Its members are the only constitutional advisors of the Crown, and it is only as members of the Privy Council that the various ministers are permitted to advise the Crown. There is no limit to the number of its members. Every British subject\* is eligible to appointment. Its members are appointed for life and bear the title of "Right Honorable" and take precedence after Knights of the Garter. Each member has to take an oath to give advice according to the best of his discretion, and for the King's honour and public weal to keep the king's counsel secret, to avoid corruption and to act in all things as "a good and true councillor ought to do to his Sovereign Lord." (*Blackstone*).

Of late years membership in the Privy Council has been conferred as a sort of decoration for services in politics, literature, science, arts, administration or war. Its *personnel* includes among others—the royal princes and the archbishops, the great officers of state and of the royal household, the Speaker of the House of Commons, the ambassadors, the principal colonial governors, colonial statesmen and certain high judicial officers. It is presided over by an officer who is called the Lord President of the Council: he manages the debates in the Council, puts proposals from the Sovereign for discussion at the Council table and reports to the Sovereign the resolutions adopted thereon.

As a matter of actual practice the general body of the Privy Council has ceased to exercise its ancient functions of advising the Sovereign ever since the principle of government by cabinet was introduced in the reign of William III. It is understood that now only those privy councillors attend its meetings who are specially summoned for the purpose of

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\* Indians, as British subjects, are also eligible to be admitted to membership of the Privy Council. The Rt. Hon'ble Mr. Ameer Ali and H. E. Lord Sinha are the only Indians so far admitted.

advising the Sovereign at whose residence meetings are held once in 3 or 4 weeks. The quorum is fixed at six with the clerk whose signature is authentication of its deliberation. The Privy Council is still, however, in theory the only instrument through which the Sovereign can exercise his prerogative (meaning, according to Dicey, "the residue of discretionary or arbitrary authority which at any time is legally left in the hands of the Crown"), being the only body of ministers recognized by law, and retains certain powers of quasi-legislation *e. g.*, the issuing of Orders in Council. The only occasion on which the Privy Council assembles as a body is that of proclaiming a new Sovereign.

The Privy Council does real work to-day only through certain small committees or select bodies of Privy Councillors (*viz.*, the Judicial Committee, the Board of Trade, the Board of Education and the Local Government Board) which are of considerable importance. But it is only one such committee which has an important bearing on the British Indian constitution *viz.*, the Judicial Committee of the Privy Council. This committee was constituted in 1833 by an Act of Parliament called—"An Act for the better Administration of Justice in His Majesty's Privy Council" (3 and 4 Wm. IV., C. 41.) to hear appeals to His Majesty in Council "from the decisions of the various courts of judicature in the East Indies and in the plantations, colonies and other Dominions of His Majesty abroad." By this Act, therefore, the Judicial Committee of the Privy Council is the Supreme Court of Appeal for British India and the British Colonies.

The members of this Court, as privy councillors, are appointed by the Crown. They are subject to dismissal by the Crown and to impeachment by Parliament. Except in case of their death, resignation, dismissal or impeachment, at an earlier date, they hold office for the life of the royal person appointing them and for six months subsequent to his or her decease. The statutes (3 and 4 Wm. IV., c. 41 and 34 and 35 Vict. c. 91) require that the committee shall be composed of those privy councillors who are, for the time being, Lord President of the (Privy) Council and Lord Chancellor, those who fill or have filled high judicial offices, and of two other councillors specially designated by the Crown; also that from those councillors who have filled judicial offices in India or the Colonies, two shall have seats in the Committee. These last four receive remuneration.

The jurisdiction of this Court is chiefly appellate. Appeals are taken

to it from the Court of Arches (an ecclesiastical Court for the trial of ecclesiastical cases) at Canterbury, from vice-admiralty courts abroad, from the Isle of Man, the Channel Islands, British India, and the colonies generally. This appellate jurisdiction is almost wholly regulated by statutes and the proceedings are in the form of a petition to the Crown in whose name the judgment is delivered. This illustrates the truth of the saying that "the King is the fountain of justice" which means that it is the prerogative of the Crown to dispense justice to the subjects. The Sovereign is presumed to be present in every British Court and to decide cases. The King is not the "author" but the "distributor" of justice. "He is not the spring, but the reservoir from whence right and equity are conducted by a thousand channels to every individual."

As a member of the British Cabinet, the Secretary of State for India is responsible to, and represents the authority of, Parliament. He is appointed by the delivery of the seal of office and he continues in office so long as the Cabinet of which he is a member, is in power, unless, of course, he willingly resigns or is compelled to resign by a vote of want of confidence passed by the House of Commons.

*The statutory powers and duties of the Secretary of State:*—The powers and duties of the Secretary of State—as distinguished from those of the Secretary of State in Council—are as follow—

1. The Secretary of State has and performs all such or the like powers and duties relating to the government or revenues of India, and has all such or the like powers over all officers appointed or continued under this Act, as, if the Government of India Act, 1858, had not been passed, might or should have been exercised or performed by the East India Company, or by the Court of Directors or Court of Proprietors of that Company. (Sec. 2.)

2. He may, subject to the provisions of this Act, superintend, direct and control the whole administrative machinery in India (sec. 2); but the Secretary of State in Council may, notwithstanding anything in this Act, by rules approved by Parliament, regulate and restrict the powers of superintendence, direction and control vested in the Secretary of State. (Sec. 19A.)

3. He may fill up any vacancy in the Council of India. [Sec. 3 (2).]

4. He may, for special reasons of public advantage, re-appoint, for a further term of five years, any member of the Council of India whose term of office has expired. [Sec. 3 (5).]

\*5. He may prescribe the quorum for meetings of the Council of India. [Sec. 6 (1).]

\*6. He is the president of the Council of India, with power to vote. [Sec. 7 (1).]

\*7. He may remove any member appointed to be the Vice-President of the Council of India [Sec. 7 (2) ]

\*8. He ordinarily presides at meetings of the Council of India [Sec. 7 (3).]

\*9. He directs when meetings of the Council of India shall be convened. (Sec. 8.)

\*10. He has to approve in writing all acts done at a meeting of the Council held in his absence. [Sec. 9 (3).]

\*11. He may require that, in case of difference of opinion on any question decided at a meeting of the Council, his opinion and the reasons for it be entered in the minutes of the proceedings. [Sec. 9 (4).]

\*12. He may constitute committees of the Council of India for the more convenient transaction of business. (Sec. 10.)

13. He may issue orders to the Governor-General in Council who must pay due obedience to them. (Sec. 33).

14. He has to be informed about any hostilities commenced by the Governor-General in Council or any treaties made by them. [Sec. 44 (3).]

✓ 15. He may, if he thinks fit, by order revoke or suspend, for such period as he may direct, the appointment of a council for any or all of the Governors' provinces [Sec. 46 (3) ]

16. His approval is necessary for taking any part of British India under the immediate authority and management of the Governor-General in Council. (Sec. 59.)

17. His sanction is necessary if the period between the dissolution of either House of the Indian Legislature or a Governor's Legislative Council and its next session is prolonged beyond six months. [Secs. 63D (c) and 72B.]

18. At the expiration of ten years after the passing of the Government of India Act, 1919, with the concurrence of both Houses of Parliament he is to submit, for the approval of His Majesty, the names of persons to form the Statutory Commission. (Sec. 84A.)

19. Subject to rules prescribed by the Secretary of State in Council with the concurrence of a majority of votes at a meeting of the Council of India, the Secretary of State may make appointments to the Indian Civil Service of persons domiciled in India. [Sec. 97 (6).]

20. The Governor-General in Council has to transmit to the Secretary of State an authentic copy of every order altering the local limits of jurisdiction of high courts. [Sec. 109 (2).]

21. He may direct that any rules to which sec. 129 A (1), applies shall be laid in draft before both Houses of Parliaments.

22. All lawful orders of the East India Company, so far as they are in force at the commencement of this Act, are deemed to be orders given by the Secretary of States under this Act. (Sec. 133.)

*For the Powers and Duties of the Secretary of State in Council see Notes under sec. 6 (1.)*

## § 2. "Revenues of India."

The term "revenues of India" occurs here and elsewhere in the Act, though it would have been more correct to speak of the revenues of "British India". *See Notes under Sec. 20.*

## § 3. "Government of India Act 1858."

*See Notes under sec. 1.*

## § 4. "East India Company."

*See Notes under sec. 1.*

## § 5. "Commissioners for the affairs of India."

The Act of 1784 begins by establishing a board of six commissioners, who were formally styled "the Commissioners for the Affairs of India," but were popularly known as the Board of Control. They have to consist of the Chancellor of the Exchequer and one of the Secretaries of State for the time being, and of four other Privy Councillors, appointed by the King, and holding office during pleasure. There was to be a quorum of three, and the President was to have a casting vote. They were unpaid, and had no patronage, but were empowered "to superintend, direct and control all acts, operations and concerns which in anywise relate to the civil or military Government or revenues of the British Territorial Possessions

in the East Indies'. They were to have access to all papers and instruments of the Company, and to be furnished with such extracts or copies as they might require. The Directors were required to deliver to the Board of Control copies of all minutes, orders, and other proceedings of the Company, and of all despatches sent or received by the Directors or any of their Committees and to pay due obedience to, and be bound by, all orders and directions of the Board, touching the civil or military Government and revenues of India. The Board might approve, disapprove, or modify the despatches proposed to be sent by the Directors, might require the Directors to send out the despatches as modified, and in case of neglect or delay, might require their own orders to be sent out without waiting for the concurrence of the Directors. A Committee of Secrecy, consisting of not more than three members, was to be formed out of the Directors, and when the Board of Control issued orders requiring secrecy the Committee of Secrecy was to transmit these orders to India, without informing the other Directors — *Ilbert, see also notes under sec 1.*

### § 6 "The Salary of the Secretary of State."

The Secretary of State for India, like the other Secretaries of State, gets an annual salary of £5,000. Ever since 1858 his salary has been paid out of the revenues of India; but the transfer of his salary to the British estimates has been demanded by the Indian National Congress for many years. The authors of the Montagu-Chelmsford Report accept the view of the Congress and they give their reasons for so doing in para. 294 of their Report which runs as follows —

"Whatever control over Indian affairs the Secretary of State keeps he keeps in the name of Parliament; and it will not suffice to improve the agent, so long as his relations with his principal are not what they should be. Of all the great departments of the State, the India office is at present the least concerned with Parliament. Parliamentary control cannot in fact be called a reality. Discussion is often out of date and ill-informed; it tends to be confined to a little knot of members and to stereotyped topics; and it is rarely followed by any decision. We fully realise the other pre-occupations of Parliament, and yet we are sure that means must be found of enabling it to take a real and continuous interest in India. No one would wish matters that ought to be discussed and settled in India to be debated and decided in Parliament; but there remain large questions of policy with which only Parliament can deal.

We are anxious that Parliament should be in a position to take them up with interest and to decide them with knowledge. We have already made one important proposal—that for periodic commissions to deal with the political progress of India—which will be of value for this purpose. We will add two further suggestions. We advise that the Secretary of State's salary, like that of all other Ministers of the Crown, should be defrayed from home revenues and voted annually by Parliament. This will enable any live questions of Indian administration to be discussed by the House of Commons in Committee of Supply. On previous occasions when this proposal has been made it has encountered the objection that it would result in matters of Indian administration being treated as party questions. Without entering into speculations as to the future of parties in Parliament, we do not see why this result would follow from such a debate more than from the existing debate on the budget. \* \* \* It might be thought to follow that the whole charges of the India Office establishment should similarly be transferred to the home Exchequer; but this matter is complicated by a series of past transactions, and by the amount of agency work which the India Office does on behalf of the Government of India; and we advise that our proposed committee upon the India Office organization should examine it and taking these factors into consideration determine which of the various India Office charges should be so transferred, and which can legitimately be retained as a burden on Indian revenues.

The "*Committee on the Home Administration of Indian Affairs*" to whom the question was referred gave their decision in the following paragraph of their Report—

"We have now to consider what alteration should be made in the present system under which the whole of the charges on account of the India Office are payable from the Indian revenues. We understand that it is the intention of His Majesty's Government that the salary of the Secretary of State should, like that of all other Ministers of the Crown, be defrayed from Home revenues and voted annually by Parliament. Our main principles have already led us to distinguish the political and administrative duties of the Secretary of State, acting as a Minister, from the agency business conducted by the India Office on behalf of the Indian authorities. It appears to follow as a general conclusion that the charges incidental to the former should be met from British revenues. They form a normal part of the cost of Imperial administration, and should in equity



be treated similarly to other charges of the same nature. We include under this head the charges on account of the Advisory Committee, which is constituted to assist the Secretary of State in the performance of his Ministerial responsibilities. Charges on account of agency work would naturally continue to be borne by India, in whose interests they are incurred. The exact apportionment is clearly a matter of technical detail which is best left for settlement between the India Office and the Treasury. The principle that we would lay down is that, in addition to the salary of the Secretary of State, there should be placed on the Estimates (a) the salaries and expenses (and ultimately pensions) of all officials and other persons engaged in the political and administrative work of the Office, as distinct from agency work ; (b) a proportionate share, determined with regard to the distinction laid down in head (a), of the cost of maintenance of the India Office ; the exact sum payable under heads (a) and (b) to be determined by agreement between the Secretary of State and the Lords Commissioners of the Treasury from time to time. Any arrangement made under this scheme would supersede the adjustment agreed to between the India Office and the Treasury as a result of the recommendations of the Royal Commission on Indian Expenditure, over which Lord Welby presided. The India Office building and site and other similar property paid for in the past by Indian revenues, and now held by the Secretary of State for India in Council, would continue to be Indian property — C. C. R. *para 32*.

The Joint Select Committee "think that all charges of the India Office, not being 'agency' charges, should be paid out of moneys to be provided by Parliament."

### § 7. "Shall be paid."

It will be noticed that it is *compulsory* on Parliament to provide for the salary of the Secretary of State out of British revenues : whereas in the case of the salaries of his under-secretaries and any other expenses of his department it is *optional* for Parliament to pay them out of Indian or British revenues.

### § 8. "His Under-Secretaries."

The Secretary of State for India has under him two Under-Secretaries viz. the Permanent Under-Secretary and the Parliamentary Under-Secretary : the former gets £2000, and the latter £1500, per annum. The

Permanent Under-Secretary remains in office, whether the ministry and, with it, the Secretary of State, change or not. The Parliamentary Under-Secretary is thus the responsible proxy of the Secretary of State; he changes with every change of ministry. We find as a matter of fact that the Parliamentary Under-Secretary usually belongs to the House of Lords, if the Secretary of State for India is a member of the House of Commons, and *vice versa*. Thus when Lord Morley—a member of the House of Lords—was Secretary of State for India, his Parliamentary Under-Secretary, the Rt. Hon. Mr. Montagu, was a member of the House of Commons; again the Rt. Hon. Mr. Montagu and Lord Sinha are members of the House of Commons and the House of Lords respectively. The underlying principle seems to be that there is to be responsible spokesmen for the India Office in both Houses of Parliament.

### § 9. "Any other expenses."

His Majesty's Government have decided to make a contribution of £136,500 per annum with effect from the current financial year towards the cost of administration of the India Office. This amount is made up as follows :—

1. (a) Salary of Secretary of State and Parliamentary Under-Secretary, £6,500, (b) estimated cost of the portion of the India Office establishment which is employed on administrative and political, as distinct from agency functions, £130,000.

2. A contribution of £40,000 per annum on account of the cost of the India Office has hitherto been made in pursuance of the recommendations of the Welby Commission so that the additional contribution which will be paid in consequence of the passing of the Government of India Act 1919 is £96,500. The amount shown against item (b) has been adopted on the recommendation of a Committee appointed by His Majesty's Government to assess the cost of the India Office establishment employed respectively on Agency and non-Agency functions and it will be in force for 1920-21 and the following four years, at the end of which period steps will be taken to reassess the contribution on the information then available.

3. As a result of this settlement the annual debate on Indian affairs in the House of Commons will take place not as hitherto on the presentation of the East India accounts but on the occasion when the Civil Service

estimates in which the contribution towards the cost of the India Office is included are brought up for consideration in the Committee of Supply.

*See Notes under the heading—"Salary of the Secretary of State" above.*

### THE COUNCIL OF INDIA.

3. (1) The Council of India<sup>1</sup> shall consist of such number of members, not less than  
The Council of India  
[1858, s. 7, 1907, s. 1.] "eight" and not more than "twelve",  
 as the Secretary of State may determine.

"Provided that the Council as constituted at the  
[1919, s. 31 (1).] time of the passing of the Govern-  
 ment of India Act, 1919, shall not  
 be affected by this provision, but no fresh appointment  
 or re-appointment thereto shall be made in excess of  
 the maximum prescribed by this provision."

(2) The right of filling any va-  
[1869 c. 97, s. 1.] cancy in the council shall be vested  
 in the Secretary of State.

(3) Unless at the time of an appointment to fill  
[1858, s. 10; 1907, s. 2;  
1916, Sch. I, 1919,  
31 (2).] a vacancy in the council "one-half"  
 of the then existing members of the  
 council are persons who have served  
 or resided in "India" for at least ten years, and have  
 not last left India more than five years before the date  
 of their appointment, the person appointed to fill the  
 vacancy must be so qualified.

(4) Every member of the council  
[1869, c. 97 s. 2; 1907,  
s. 4; 1919, s. 31 (3).] shall hold office, except as by this  
 section provided, for a term of "five" years.

“Provided that the tenure of office of any person who is a member of the Council at the time of the passing of the Government of India Act, 1919, shall be the same as though that Act had not been passed.”

(5) The Secretary of State may, for special reasons of public advantage, re-appoint  
 [1869, c. 97 ss. 2, 3] for a further term of five years any member of the council whose term of office has expired. In any such case the reasons for the re-appointment shall be set forth in a minute signed by the Secretary of State and laid before both Houses of Parliament<sup>2</sup>. Save as aforesaid, a member of the council shall not be capable of re-appointment.

(6) Any member of the council may, by writing  
 [1869, c. 97, s. 6.] signed by him, resign his office. The instrument of resignation shall be recorded in the minutes of the Council.

(7) Any member of the council may be removed  
 [1858, s. 11.] by His Majesty from his office on an address of both Houses of Parliament.

(8) “There shall be paid to each member of the  
 [1919, s. 31 (4).] Council of India the annual salary of twelve hundred pounds: Provided that any member of the Council who was at the time of his appointment domiciled in India shall receive, in addition to the salary hereby provided, an annual subsistence allowance of six hundred pounds.”

“Such salaries and allowances may be paid out of the revenues of India or out of moneys provided by Parliament.”

(9) “Notwithstanding anything in any Act or rule, where any person in the service of the Crown in India is appointed a member of the Council before the completion of the period of such service required to entitle him to a pension or annuity, his service as such member shall, for the purpose of any pension or annuity which would have been payable to him on completion of such period, be reckoned as service under the Crown in India whilst resident in India.”

[1919, s. 31 (5).]

### § 1. The Council of India.

The Council of India was created by the Government of India Act, 1858. It originally consisted of fifteen members of whom eight were to be appointed by the Crown and seven elected by the Directors of the East India Company. The major part, both of the appointed and of the elected members, were to be persons who had served or resided in India for ten years, and with certain exceptions, who had not left India more than ten years before their appointment. Future appointments or elections were to be so made that nine at least of the members of the Council should hold these qualifications. The power of filling vacancies was vested in the Crown, as to Crown appointments, and in the Council itself, as to others. The members of the council were to hold office during good behaviour, but to be removable on an address by both Houses of Parliament, and were not to be capable of sitting or voting in Parliament. The Council of India, as thus constituted in 1858, was not to be, as the Earl of Dervy pointed out, “a screen between the Minister and Parliament, but a body of men well acquainted with the affairs of India, to give the Minister advice, which on his own responsibility, he might be at liberty either to accept or reject.” From the very first, therefore, the Council of India was a purely advisory body; subsequent Acts effected

some changes in the constitution of the body, keeping its functions practically unchanged. Thus the Government of India Act, 1869, vested the right of filling vacancies in the Council in the Secretary of State, and changed the tenure of office of members from tenure during good behaviour to tenure for a term of ten years, with a power of re-appointment, for a further term of five years, for special reasons of public advantage. The Council of India Reduction Act of 1889 authorised the Secretary of State to abstain from filling vacancies in the Council until the number should be reduced to ten. An Act of 1907 repealed the Act of 1889 and provided that the Council was to consist of such number of members not less than ten and not more than fourteen as the Secretary of State might from time to time determine.

Omitting certain provisions of temporary effect, and combining the provisions of the four amending Acts of 1869, 1876, 1907 and 1919 this Council, originally fifteen in number, now, consists of such number of members, not less than eight, and not more than twelve as the Secretary of State may determine. At least half of the members must have served or resided in India for not less than ten years and not left India more than five years before the date of their appointment. The members are appointed by the Secretary of State for a term of five years at the outset and may be re-appointed for a further term of five years for special and declared public reasons; any member of the Council may be removed by His Majesty from his office on an address of both Houses of Parliament. No member can sit or vote in either House of Parliament, and hence can take no active share in party politics. Each member gets an annual salary of £1200.

The Council now consists of three Indian members each of whom gets in addition to the annual salary of £1200 an annual subsistence allowance of six hundred pounds. Under the former Act such salaries were paid out of Indian revenues; but under the Government of India Act, 1919, such salaries or allowances might be paid out of the revenues of India or out of moneys provided by Parliament; as matter of fact they are being paid out of moneys provided by Parliament.—See *M. C. R.* paras 294, 295.

The "*Committee on the Home Administration of Indian Affairs*" presided over by the Marquess of Crewe virtually proposed the abolition of the Council of India and its substitution by a new body called the Advisory Committee. But the Joint Select Committee were not in

favour of the abolition of the Council of India. "They think that, at any rate for some time to come, it will be absolutely necessary that the Secretary of State should be advised by persons of Indian experience, and they are convinced that, if no such Council existed, the Secretary of State would have to form an informal one, it not a formal one. Therefore, they think it much better to continue a body which has all the advantages behind it of tradition and authority, although they would not debar the readjustment of its work so as to make it possible to introduce what is known as the portfolio system. They think, also, that its constitution may advantageously be modified by the introduction of more Indians into it and by shortening of the period of the service upon it, in order to ensure a continuous flow of fresh experience from India and to relieve Indian members from the necessity of spending so long a period as seven years in England."—(J. S. C. R.)

## § 2. "Laid before both Houses of Parliament."

Parliamentary legislation has, at one time or another, created the Government of India, authorised the establishment of the large Provinces ruled by Governors and Lieutenant-Governors and brought the provincial Governments into subordination to the Central Government. From Parliament, too, are derived the constitution and functions of the Indian and Provincial legislatures, the High Courts, and the method of recruitment of the Indian Civil Service and any material change in these would, as a consequence, involve Parliamentary sanction.

*The control of Parliament over Indian affairs* may be classified under two heads (1) Legislative, and (2) Administrative. As the powers of the Indian Legislature, though wide, are derived from parliamentary statutes, it may therefore be said to exercise powers of subordinate legislation which are therefore limited. These limitations are, that the Indian Legislature has not power to make any law repealing or affecting—

- (a) any Act of Parliament passed after the year 1860 and extending to British India ; or
- (b) any Act enabling the Secretary of State in Council to raise money in the United Kingdom for the Government of India ;
- (c) or the Army Act, the Air Force Act or any Act amending the same,

The Indian Legislature has not power to make any law affecting the authority of Parliament, or any part of the unwritten laws or constitution of the United Kingdom of Great Britain and Ireland, whereon may depend in any degree the allegiance of any person to the Crown of the United Kingdom, or the sovereignty or dominion of the Crown over any part of British India. Parliament can, on the other hand, repeal or alter any laws made by any authority in British India, and legislate for British India. But as in the case of Canada and other self-governing dominions this power is held in abeyance, and is evoked into life merely when there is a question of constitutional legislation or of general legislation for the Empire, in both of which cases Parliament is prepared to legislate even for the dominions. We may thus conclude that the Indian Legislature, is, in the words of Prof. Dicey, a non-sovereign legislative body—the King in Parliament being the legislative Sovereign of India.

The administrative control of Parliament really includes financial control; but for the purpose of elucidation it may be divided under two heads—(a) purely administrative and (b) financial. The only financial matters in which its sanction is necessary are—(1) expenditure on military operations beyond the external frontiers of India, (unless the expenditure is necessary for preventing, or repelling actual invasion of India, i.e., unless it is for defensive purposes), (2) the annual presentation of the Indian Budget before Parliament together with a report on the Home Accounts by an independent auditor and a statement showing the moral and material progress of India, (3) the annual presentation of the civil service estimates in which the contributions towards the costs of the India Office are included.

The administrative control of Parliament is exercised by means of motions for papers, resolutions, criticisms, questions etc. Resolutions in the House of Commons, it is well-known, are not binding on the Executive Government which may give effect to them or ignore them altogether according as they agree with their policy or not. The Secretary of State is responsible to Parliament and he "and the Cabinet of which he is a member, are open to criticism, and if occasion should arise, to censure, in either House of Parliament; while every member has the right of interpellation on any matter relating to the administration of India."

*Statutory Powers of Parliament over Indian Administration.—*

1. The reasons for re-appointing any member of the Council of India for a second term of five years have to be set forth in a minute signed



by the Secretary of State and laid before both Houses of Parliament. [Sec. 3 (5)]

2. On an address of both Houses of Parliament any member of the Council of India may be removed by His Majesty from his office. [Sec. 3 (7).]

3. Parliament provide the moneys out of which the salary of the Secretary of State is to be paid [Sec. 2 (3)], and may pay the salaries and allowances of the members of the Council of India, the Under-Secretaries of State and any other expenses of the department of the Secretary of State. [Sec 2 (3), Sec 3 (8)]

4. Orders for commencing hostilities by His Majesty's forces in India shall be communicated to both Houses of Parliament. (Sec. 15.)

5. Any order of His Majesty in Council making an addition to the establishment of the Secretary of State in Council or to the salaries of the persons on that establishment have to be laid before both Houses of Parliament. [Sec. 17 (1).]

6. Both Houses of Parliament must approve by resolution the draft rules made under Sec. 19A relating to subjects other than transferred subjects, before such rules are finally made. Any rules relating to transferred subjects made under the same section have to be laid before both Houses of Parliament. [Sec. 19 (a).]

7. The consent of both Houses of Parliament is necessary for the application of Indian revenue to military operations beyond the Indian frontier. (Sec. 22.)

8. The accounts relating to India and a statement exhibiting the moral and material progress and condition of India have to be laid before both Houses of Parliament by the Secretary of State in Council in the month of May every year. [Sec. 26 (1).]

9. The auditor of Indian Accounts in the United Kingdom is to lay his reports before both Houses of Parliament with the accounts of the year to which the reports relate. [Sec. 27 (7).]

10. A draft of any notification creating a Council in any Province under a Lieutenant Governor has to be laid before each House of Parliament and if an address is presented to His Majesty by either House of Parliament against the draft no further proceedings shall be taken thereon. [Sec. 55 (1).]

11. Every notification under [Sec. 55 (1)] shall be laid before both Houses of Parliament as soon as may be after it is made. [Sec. 55 (2).]

12. Every Act passed by the certifying power of the Governor General or a Governor shall be laid before both Houses of Parliament. [Sec. 67B (2) and Sec. 72E (3).]

13. All rules relating to Local Legislature made under Sec. 76 are to be laid before both Houses of Parliament as soon as may be after they are made. [Sec. 76 (4).]

14. The rules for business at meetings of Legislative Councils of provinces other than Governors' provinces are to be laid before both Houses of Parliament as soon as may be after they are made. [Sec. 80 (3).]

15. In selecting the names for the members of the Statutory Commission the Secretary of State has to obtain concurrence of both Houses of Parliament. [Sec. 84A (1)]

16. All rules made in pursuance of sub-secs. (1), (2) and 2A. of Sec. 97 are to be laid before Parliament within 14 days after the making thereof, or, if Parliament is not then sitting then within 14 days after the next meeting of Parliament. [Sec. 97 (3).]

17. Any rules made under sub-sec. 6 of Sec. 97 (relating to appointments to the Indian Civil Service of persons (domiciled in India) shall not have force until they have been laid for 30 days before both Houses of Parliament. [Sec. 97 (6).]

18. Any resolution issued by the Governor-General in Council defining and limiting the qualifications of persons outside the Indian Civil Service who may be appointed to posts reserved to the Indian Civil Service, shall not have force until it has been laid for 30 days before both Houses of Parliament. [Sec 99 (3).]

19. Any rules to which sub-section (1) of Sec. 129A applies shall be laid before both Houses of Parliament and if any address is presented to His Majesty by either House of Parliament within the next 30 days on which that House has sat praying that the rules or any of them may be annulled. His Majesty in Council may annul them. [Sec. 120A. (3).]

20. Nothing in this Act shall affect the power of Parliament to control the proceedings of Governor-General in Council, or to repeal or alter any law made by any authority in British India or to legislate for British India and the inhabitants thereof. [Sec. 131 (2).]

Seat in Council dis-  
qualification for Parlia-  
ment [1858, s. 12].

4. No member of the Council of India shall be capable of sitting or voting in Parliament<sup>1</sup>.

## § 1. "Sitting or voting in Parliament."

No member of the Council of India can sit or vote in either House of Parliament: this restriction is apparently meant to prevent such members from taking an active share in party politics. Viscount Palmerston explained the reasons for such exclusion in the following words:—

"We do not propose that the Councilors shall be capable of sitting in Parliament. We think there would be great inconvenience in such an arrangement; that they would become party men, that they would necessarily associate with one side or the other in this House, and that with changes of Administration, the relations between the President and the Councilors might then become exceedingly embarrassing."

Duties of council.  
[1858, s. 19; 1919,  
s. 34.]

5. The Council of India shall, under the direction of the Secretary of State, and subject to the provisions of this Act, conduct the business transacted in the United Kingdom in relation to the government of India and the correspondence with India.

The latter portion of the Section laying down that "every order or communication sent to India, and every order made in the United Kingdom in relation to the Government of India under this Act, shall be signed by the Secretary of State" has been repealed by Sec. 34 of Government of India Act of 1919.

6. (1) All powers required to be exercised by the Secretary of State in Council<sup>1</sup>, and all powers of the Council of India, shall be exercised at meetings of the council at which "such number of members<sup>2</sup> are present as may be prescribed by general directions of the Secretary of State."

(2). The council may act notwithstanding any vacancy in their number.

Powers of council.  
[1858, s. 22; 1919, s.  
32 (1).]

### § 1. "Powers exercised by the Secretary of State in Council."

The powers of the Secretary of State for India in Council are immense, far exceeding those exercised by the colonial Secretary of State. So far as finance and expenditure are concerned, the Council stands to the Secretary of State for India much in the same relation as that in which Parliament stands to the other Secretaries of State. It may reasonably be assumed that Parliament should not have given these immense powers to any individual official if, in the exercise of such powers, he was dissociated from his Council.

As a matter of form certain things have to be done by "the Secretary of State *in Council*." These powers may be enumerated as follow—

1. All powers required to be exercised by the Secretary of State in Council shall be exercised at meetings of the Council at which such number of members are present as may be prescribed by general directions of the Secretary of State. [Sec. 6 (1).]

2. The Secretary of State in Council may appoint any member of Council to be Vice-President thereof. [Sec 7 (2).]

3. The Secretary of State in Council is to prescribe by order the procedure for the sending of orders and communications to India. [Sec. (11).]

4. The Secretary of State in Council may make all appointments to and promotions in his establishment and may remove any officer or servant belonging to the establishment. [Sec. 17 (3).]

5. The Secretary of State in Council may by rule regulate and restrict the exercise of the powers vested in the Secretary of State and the Secretary of State in Council. (Sec. 19A.)

6. The Secretary of State in Council may make rules for the relaxation of control under sec. 19A in the form in which they have been approved in draft by both Houses of Parliament. (Sec. 19A.)

7. The Bank of England is to maintain an account entitled "The Account of Secretary of State in Council of India." (Sec. 23.)

8. The Secretary of State in Council may for payment of current demands, keep at the bank of England such accounts as he deems expedient. [Sec. 23 (4).]

9. The Secretary of State in Council may by power of attorney authorise all or any of the cashiers of the Bank of England to sell or purchase stock and to receive dividends (Sec. 24.)

10. The Secretary of State in Council shall within the first 28 days during which the Parliament is sitting next after the first of May in every year lay before both Houses of Parliament the accounts relating to India and the statement exhibiting the moral and material progress and condition of India. (Sec. 26.)

11. The accounts of the Secretary of State in Council are to be audited every year and he has to render every help to the auditor. (Sec. 27.)

12. The Secretary of State in Council may sue and be sued by the name of the Secretary of State in Council as a body corporate and every person has the same remedy against the Secretary of State in Council as he might have had against the East India Company. (Sec. 32.)

13. The Secretary of State in Council may by order suspend until further order all or any of the powers which the Governor General may during absence from his Executive Council exercise under Sec. 43 (1), (2). [Sec. 43 (3)]

14. The express order of the Secretary of State in Council is necessary for the Governor-General in Council, except in certain cases of emergency, to declare war or commence hostilities or make any treaties. [Sec. 44 (1).]

15. Rules authorizing the revocation or suspension of the transfer of any subject can only be made with the sanction of the Secretary of State in Council [Sec. 45A (2).]

16. The Secretary of State in Council determines the number of members—not exceeding four—of the Governor's Executive Council. [Sec. 47 (2).]

17. The approval of the Secretary of State in Council is necessary for the creation of a Council in any Province under a Lieutenant Governor. [Sec. 55 (1).]

18. The Secretary of State in Council may disallow any notification issued by the Governor-General in Council for declaring or altering boundaries of Provinces. [Sec. 60 (2).]

19. The previous approval of the Secretary of State in Council is necessary for the Indian Legislature to make any law empowering any Court other than a High Court to sentence to the punishment of death any of His Majesty's subjects born in Europe or abolishing a High Court. [Sec. 65 (3).]

20. The Secretary of State in Council may by resolution in Council apply Sec. 71 to any part of British India, as from a date to be fixed

in the resolution, and withdraw the application of that section from any part to which it has been applied. [Sec. 71 (4)]

21. With the approval of the Secretary of State in Council the Governor General may make rules as to the membership of Local Legislatures. [Sec. 76 (3)]

22. The Secretary of State in Council may (except so far as he may provide by rules to the contrary) reinstate any person in the Civil Service of the Crown in India who has been dismissed. [Sec. 96 B (1)]

23. The Secretary of State in Council may make rules for regulating the classification of the Civil Service in India, the methods of their recruitment, their condition of service, pay and allowances and discipline and conduct. [Sec. 96B (2).]

24. Rules regarding right to pensions and the scale and condition of pensions of all persons in the Civil Service of the Crown in India appointed by the Secretary of State in Council may be varied or added to by the Secretary of State in Council. [Sec. 96B (3).]

25. The Secretary of State in Council shall establish in India a Public Service Commission of not more than 5 members; each member shall hold office for 5 years and may be reappointed.

26. No member shall be removed before expiry of his term of office except by orders of the Secretary of State in Council. The qualifications for appointment, and the pay and pensions (if any) attaching to the office of Chairman and members shall be described by rules made by the Secretary of State in Council. [Sec. 96 C (1).]

27. The Public Service Commission shall discharge in regard to recruitment and control of public services of India, such functions as may be assigned thereto by rules made by the Secretary of State in Council. [Sec. 96 C (2).]

28. An auditor-general in India shall be appointed by the Secretary of State in Council and shall hold office during His Majesty's pleasure. The Secretary of State in Council shall by rules make provision for his pay, powers, duties and conditions of employment. [Sec. 96D (1).]

29. The Secretary of State in Council may with the advice and assistance of the Civil Service Commission make rules for admission to the Civil Service. [Sec. 97 (1).]

30. The Secretary of State in Council may appoint or admit to the Indian Civil Service only such persons as are certified to be entitled for

appointment according to the order of their proficiency as shown by their examination. [Sec. 97 (5).]

31. The Secretary of State in Council with the concurrence of the majority of votes at a meeting of the Council of India may make rules for enabling the Secretary of State to make appointments to the Indian Civil Service of persons domiciled in India. [Sec. 97 (6).]

32. The Secretary of State in Council may with the advice and assistance of the Civil Service Commissioners prescribe restrictions for the admission to the Indian Civil Service of a British subject who or his father or mother was not born within His Majesty's dominions. (Sec. 97 2A.)

33. The sanction of the Secretary of State in Council is necessary for any resolution to be issued by the Governor-General in Council defining and limiting the qualifications of persons outside the Indian Civil Service who may be appointed to posts reserved to the Indian Civil Service. [Sec. 99 (3)]

34. The Secretary of State in Council may fix the salaries, allowances, furloughs, retiring pensions, and (where necessary) expenses for equipment and voyage of the Chief Justice and other High Court judges and may alter them. [Sec. 104 (1).]

35. The Secretary of State in Council fixes the salaries and allowances that may be paid out of the revenues of India to the Bishops and Archdeacons in India. [Sec. 118 (1)]

36. The consent in writing of the Secretary of State in Council is necessary for any European British subject to make loans to Princes or Chiefs in India. (Sec. 125.)

37. Nothing in this Act shall derogate from any powers of the Secretary of State in Council in relation to the Government of India. [Sec. 131 (1).]

38. All contracts made and liabilities incurred by the East India Company may, so far as they are outstanding at the commencement of this Act, be imposed by or against the Secretary of State in Council. (Sec. 132.)

## § 2. "Such number of Members."

Prior to the passing of the Government of India Act, 1919, the quorum at meetings of the Council of India was fixed at five members. This provision has now been repealed by Sec. 32 (1) of the Government of India Act 1919.

President and vice-  
president of council.

**7.** (1) The Secretary of State shall be the president of the Council of India, with power to vote.

(2) The Secretary of State in Council may appoint any member of the council to be vice-president thereof, and the Secretary of State may at any time remove any person so appointed.

[1858, s. 21.]

(3) At every meeting of the council the Secretary of State, or, in his absence, the vice-president, if present, or, in the absence of both of them, one of the members of the council, chosen by the members present at the meeting, shall preside.

[1858, s. 22.]

**8.** Meetings of the Council of India shall be convened and held as and when the Secretary of State directs, but one such meeting at least shall be held in every "month."<sup>1</sup>

Meeting of council.  
[1858, s. 22. ; 1919,  
s. 32 (2).]

### § 1. "In every month."

The word "month" has been substituted for the word "week" by the Act of 1919.

**9.** (1) At any meeting of the Council of India at which the Secretary of State is present, if there is a difference of opinion on any question, except a question with respect to which a majority of votes<sup>1</sup> at a meeting is by this Act declared to be necessary, the determination of the Secretary of State shall be final.

Procedure at meetings.  
[1858, s. 23.]



(2) In case of an equality of votes at any meeting of the council, the person presiding at the meeting shall have a second or casting vote.

(3) All acts done at a meeting of the council in the absence of the Secretary of State shall require the approval in writing of the Secretary of State.

(4) In case of difference of opinion on any question decided at a meeting of the council, the Secretary of State may require that his opinion<sup>2</sup> and the reasons for it be entered in the minutes of the proceedings, and any member of the council who has been present at the meeting, may require that his opinion, and any reasons for it that he has stated at the meeting, be also entered in like manner.

### § 1 "Majority of votes."

There are certain matters which must be decided in Council and in doing which the Secretary of State is bound by statute to obey the majority. Here he must act not only *in* Council, but *with* it. Thus *the concurrence of the majority of votes of the Council is necessary for:—*

(1) any grant or appropriation of any part of the revenues, or any other property coming into the possession of the Secretary of State in Council by virtue of the Government of India Act, 1858 or this Act. (sec. 21); (2) selling or mortgaging any real or personal estate for the time being vested in His Majesty for the purposes of the Government of India (sec. 28.); (3) making any contract for the purposes of this Act (sec. 29.); (4) an order affecting salaries of the members of the Governor-General's Executive Council [sec. 85 (2) (a)]; (5) making rules as to the absence on leave or special duty of persons in the service of the Crown in India; (6) making rules for distributing between the several authorities in India the power of making appointments to and promotions in offices under the Crown in India. (sec. 95); (7) sanctioning any rules prescribed by the Governor-General in Council regulating appointments to offices in the Indian Civil Service of persons of proved merit and ability

domiciled in British India, born of parents habitually resident in India and not established there for temporary purposes only (sec. 99), and (8) making provisional appointments in the civil service of persons not being a member of that service (sec. 100).

It will be seen from the above that the cases in which the assent of a majority of the Council is required in order that action may be taken are limited in number ; and in all cases, the Secretary of State, a Cabinet minister, speaking, it may be, with the authority of the Cabinet, and responsible to Parliament, can make it very difficult for his Council to differ from him. And here comes in the question of the relationship between the Secretary of State for India and Parliament. The Secretary of State is also a member of the Cabinet, and as such is responsible to Parliament. Questions concerning the Government of India may therefore be asked in either House, and it is open to any member, subject to the rules of the House, to promote a discussion, to submit a resolution or to propose a vote of censure.\*

"Parliament may sometimes be a sleepy guardian of Indian interests ; but the feeling that it may call him at any time to account certainly leads the Secretary of State and his Council to exercise with some straitness both the specific powers of control with which they are particularly invested and also the general power of superintendence which the Government of India Act gives them. We need not dwell on the fact that they manage directly the Home charges (which amount to one-fifth of the total expenditure of India) on account of military equipment, stores, pensions, leave allowances, and the like ; and that they also control the raising of sterling loans. The greater part of their duties consists in the control of the Government of India. The Governor-General in Council is required by section 33 of the Government of India Act, 1915, 'to pay due obedience to all such orders' as he may receive from the Secretary of State ; and we have to see how this obedience is in fact exacted. Obviously the intensity of control must vary with the interest shown by Parliament on whose behalf the Secretary of State exercises his powers."—*M. C. R. para 35.*

## § 2. "His Opinion."

Viscount Palmerston thus explained the need for this provision—

"We propose that if the Councillors differ in opinion from the President, they shall have the right to record that difference, together with

their reasons, upon the Minutes of the Council so as to be able to justify themselves afterwards for the advice they have given."

**10.** The Secretary of State may constitute committees of the Council<sup>1</sup> of India for the more convenient transaction of business, and direct what departments of business are to be under those committees respectively, and generally direct the manner in which "the business<sup>2</sup> of the Secretary of State in Council or the Council of India shall be transacted, and any order made or act done in accordance with such direction shall, subject to the provisions of this Act, be treated as being an order of the Secretary of State in Council."

Committees of Council. [1858, s. 20; 1919 s. 32 (3)]

### § 1. "Committees of the Council".

The existing committees are Finance, Political and Secret, Military, Revenue and Statistics, Public works, Stores, and Judicial and Public. (*Ilbert*).

### § 2. "The business etc."

The words "All business of the Council on Committees thereof is to be transacted" have been omitted and in their place the lines within quotation marks have been inserted by the Act of 1919

## ORDERS AND COMMUNICATIONS.

**11.** "Subject to the provisions of this Act the procedure for the sending of orders and communications to India and in general for correspondence between the Secretary of State and the Governor-General in Council or any local government shall be such as may

Correspondence between Secretary of State and India. [1919, s. 34.]

be prescribed by order of the Secretary of State in Council."

This is a new Section in place of the old one. Under the repealed section the Secretary of State had to deposit in the Council room every order or communication proposed to be sent to India and every order proposed to be made in the United Kingdom, for the perusal of the members of the Council for 7 days before sending or making them, and any member of the Council could record in a minute book his opinion with respect to any such order or communication. In case the majority of the members recorded opinions against any proposed Act the Secretary of State, unless he defers to the opinion of the majority, after recording his reasons, could act in opposition to the opinion of such majority.

[12, 13, 14.] *These sections have been repealed by the Government of India Act, 1919.*

Sections 12 and 13 of the Act of 1915 dealt with the exceptional powers of the Secretary of State to send despatches or orders in cases of urgency and to send secret communications or orders relating to war, peace etc. Sec. 13 of the said Act dealt with secret despatches from the Governor-General and from Governors which might be sent direct by them to the Secretary of State and were not required to be communicated to members of the Council of India. These sections and section 11 have been repealed by the Act of 1919 and in place of all these sections a new section has been substituted as sec 11 of the present Act. The Crewe Committee thus state the reasons for the change effected.—

"Our second suggestion is that the Secretary of State should regulate by executive orders the mode of conduct of correspondence between the India Office and the Government of India and Local Governments. The issue of orders and communications has hitherto been regulated by the, somewhat meticulous procedure prescribed by the Act of 1858; and we do not think we need justify our proposal to liberate the India Office from the restrictions imposed by a by-gone age and to place it on the same footing as other Government Departments in this respect. There may be other portions of the existing Act to which the spirit of this recommendation would equally be applicable".—C. C. R.

15. When any order is sent to India, directing the actual commencement of hostilities<sup>1</sup> by His Majesty's forces in India, the fact of the order having been sent shall, unless the order has in the meantime been revoked or suspended, be communicated to both Houses of Parliament within three months after the sending of the order, or, if Parliament is not sitting at the expiration of those three months, then within one month after the next meeting of Parliament.

§ 1. "Order directing the actual commencement of hostilities."

Viscount Palmerston, in moving for leave to bring in the first Bill for the Better Government of India (February 12, 1858), thus explained the necessity for this section—

"We propose that in any case in which orders shall be sent to India involving the immediate commencement of hostilities, communications thereof shall be made to Parliament within one month (subsequently changed to three months), if Parliament be then sitting, or within one month, after Parliament shall next meet. That interval will allow a sufficient time to elapse to prevent injury to the public service from too early publication of orders so issued; while it will, at the same time, give Parliament an early opportunity of calling upon the Government for explanation of the causes which had led to such orders."

An order directing the actual commencement of hostilities must be communicated to Parliament within three months after it has been given,—the time allowed being a quant reluc of the past. Except for the purpose of preventing or repelling actual invasion or under other sudden and urgent necessity, the revenues of India are not to be applicable, without the consent of both Houses of Parliament, to defraying the expenses of military operations beyond the external frontiers of His Majesty's Indian possessions by His Majesty's forces charged upon those revenues. But even the Governor-General in Council has certain powers of levying war without the previous approval of the Secretary of State in Council. If hostilities have actually begun or

preparations made for beginning hostilities against British India or a dependent prince or state, or a prince or state protected by treaty of guarantee, he may declare war, commence hostilities, or make treaties for making war against the attacking power, and may even make treaties of guarantee in respect of the possessions of a prince or state in return for assistance against the assailing power. In any case where he commences hostilities or makes a treaty, the action must be reported to the Secretary of State "*De facto*, of course, the time for serious exercise of these powers has disappeared. But the existence of the power is interesting; no Governor-General or Government of a Dominion has any legal authority to do a single act of sovereignty as regards the declaration of war, the making of peace, or of political treaties of any kind." (*Keith*.)

[16.] *Repealed by the Government of India Act, 1919, Sch. II, Pt. III.*

This section reproduced an enactment contained in the Regulating Act of 1773 by which Warren Hastings and his successors were directed to correspond regularly with the Court of Directors in England regarding "the government, commerce, revenues or affairs of India." It has been repealed probably because it has not been considered necessary at the present day.

## ESTABLISHMENT OF SECRETARY OF STATE.

17. (1) No addition may be made to the establishment of the Secretary of State in Council<sup>1</sup>, nor to the salaries of the persons on that establishment, except by an Order of His Majesty in Council,<sup>2</sup> to be laid before both Houses of Parliament within fourteen days after the making thereof, or, if Parliament is not then sitting, then within fourteen days after the next meeting of Parliament.

(2) The rules made by His Majesty for examinations, certificates, probation or other tests of fitness in relation to appoint-

Establishment of  
Secretary of State.  
[1858, s. 15.]

[1858, s. 16.]

ments to junior situations in the civil service, shall apply to such appointments on the said establishment.

(3) The Secretary of State in Council may, subject to the foregoing provisions of this section, make all appointments to and promotions in the said establishment, and may remove any officer or servant belonging to the establishment.

### § 1 "The establishment of the Secretary of State in Council"

The Act of 1858 authorized the creation of the establishment of the Secretary of State in Council, commonly known as the India Office. The original members of the establishment were taken over from the Board of Control and the East India House. Their number and their salaries were subsequently fixed by an Order in Council, required to be laid before Parliament; and no variation can be made except by the same procedure. The Secretary of State, in virtue of his office, has two Under-Secretaries, one permanent and the other Parliamentary to whom some of his minor duties are delegated. There is, in addition, an Assistant Under-Secretary, who is also the Clerk of the Council. For each department of business, corresponding to the Committees into which the Council is divided, there is a Secretary and Assistant Secretary with a staff of clerks. The Store Department is under a Director-General. Other Departments are those of the Accountant-General, the Registrar, and Superintendent of Records, and the Director of Funds. The Medical Board for the examination of Officers of the Indian Services, the Legal Adviser and Solicitor to the Secretary of State, and the Librarian may also be mentioned. Appointments to the establishment are made by the Secretary of State in Council; but junior situations must be filled in accordance with the general regulations governing admission to the Home Civil Service; somewhat outside the establishment stands the Auditor whose appointment by the Crown must be countersigned by the Chancellor of the Exchequer, and who nominates his own assistants,—*Imperial Gazetteer, Vol. iv, p. 39.*

## § 2. "An order of His Majesty in Council"

An Order in Council or an ordinance is made by the king with the advice of his Privy Council. Power to make ordinances which have the force of law and are binding on the whole community is frequently given to the Crown in Council by Statute, notably in matters affecting public health, education etc, and the practice is constantly becoming more and more extensive, until at present the rules made in pursuance of such powers—known as "statutory orders"—are published every year in a volume similar in form to that containing the statutes. Some of these orders must be submitted to Parliament, but go into effect unless within a certain time an address to the contrary is passed by one of the Houses, while others take effect at once, or after a fixed period, and are laid upon the tables of the Houses in order to give formal notice of their adoption. It is necessary here to point out that in making such orders the Crown acts by virtue of a purely delegated authority, and stands in the same position as a Town Council. The orders are a species of subordinate Legislation and can be enacted only in strict accordance with the statutes by which the power is granted—*Lowell's Government of England*, (Vol I, p 20.)

*Powers of His Majesty in Council* —1. His Majesty in Council may, by an order which has to be laid before both Houses of Parliament, make any additions to the establishment of the Secretary of State in Council and to the salaries of the persons on that establishment. [Sec. 17 (1).]

2. His Majesty in Council may annul any rules relating to transferred subjects made under sec. 19A if any address is presented to His Majesty by either House of Parliament (Sec. 19A.)

3. His Majesty may, by order in Council, make provision for the appointment of a High Commissioner for India in the United Kingdom, and for delegating to him any of the powers previously exercised by the Secretary of State or the Secretary of State in Council. (Sec. 29)

4. In the case of Bills reserved for the signification of His Majesty's pleasure it is necessary that the assent should be signified by His Majesty in Council and notified by the Governor-General. [Sec. 68 (2).]

5. It is lawful for His Majesty in Council to signify his disallowance of an Act of the Indian Legislature, even though the Governor-General has declared his assent thereto [Sec. 69 (1).]

6. It is lawful for His Majesty in Council to signify his disallowance of an Act of a Local Legislature, even though it has been assented to by the Governor-General. [Sec. 82 (1).]



7. An Act of a Local Legislature reserved by the Governor-General for the signification of His Majesty's pleasure thereon shall not have validity until His Majesty in Council has signified his assent thereto. [Sec. 81A (3).]

8. His Majesty in Council may, on an address presented to His Majesty, annul any rules made under sec. 129 (1)

**18.** His Majesty may, by warrant under the Royal Sign Manual, countersigned by the Chancellor of the Exchequer<sup>1</sup>, grant to any secretary, officer or servant appointed on the establishment of the Secretary of State in Council such compensation, superannuation or retiring allowance, or to his legal personal representative such gratuity, as may respectively be granted to persons on the establishment of a Secretary of State, or to the personal representatives of such persons, under the laws for the time being in force concerning superannuations and other allowances to persons having held civil offices in the public service or to personal representatives of such persons.

<sup>1</sup> Pensions and gratuities. [1858, s. 18; 1911, c. 25, s. 1]

### § 1. "Chancellor of the Exchequer."

The special care of the finances of the country had devolved upon the Chancellor of the Exchequer who, after the framing of the First Reform Act, became the second person of the Treasury (next to the first Lord of the Treasury who is usually the Prime Minister of the day) and virtually the Finance Minister of State. "The Chancellor is a member of the Treasury Board, taking precedence of the Junior Lords by virtue of his patent as leader Treasurer; and, being invariably, and necessarily, a member of the House of Commons he usually acts as Leader of that House, if the Prime Minister is in the Lords, or unable to act. It is however in his capacity of the Minister of the Crown that he makes the important Budget statements".—*Jenks's The Government of the British Empire*; p. 217.

## INDIAN APPOINTMENTS.

**19.** In the appointment of officers to His Majesty's army the same provision as heretofore, or equal provision, shall be made for the appointment of sons of persons who have served in India in the military or civil service of the Crown<sup>1</sup> or of the East India Company.<sup>2</sup>

The first portion of the Section of the Act of 1915 relating to the powers of the Secretary of State to make rules in relation to appointments and admission to service &c. have been repealed.

§ 1. "Crown"—see notes under sec. 1.

§ 2. "East India Company"—see notes under sec. 1.

## Relaxation of Control of the Secretary of State.

**19A.** "The Secretary of State in Council may, notwithstanding anything in this Act, by rule regulate and restrict the exercise of the powers<sup>1</sup> of superintendence, direction, and control, vested in the Secretary of State and the Secretary of State in Council, by this Act, or otherwise, in such manner as may appear necessary or expedient in order to give effect to the purposes of the Government of India Act, 1919<sup>2</sup>.

Relaxation of control  
of Secretary of State.  
[1919, s. 33.]

"Before any rules are made under this section relating to subjects other than transferred subjects,<sup>3</sup> the rules proposed to be made shall be laid in draft before both Houses of Parliament, and such rules shall not be made unless both Houses by resolution approve the draft either without modification or

addition, or with modifications or additions to which both Houses agree, but upon such approval being given the Secretary of State in Council may make such rules in the form in which they have been approved, and such rules on being so made shall be of full force and effect.

“Any rules relating to transferred subjects made under this section shall be laid before both Houses of Parliament as soon as may be after they are made, and, if an Address is presented to His Majesty by either House of Parliament within the next thirty days on which that House has sat after the rules are laid before it praying that the rules of any of them may be annulled, His Majesty in Council may annul the rules or any of them, and those rules shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder.”

**§ 1. “Restrict the Exercise of the Powers of Superintendence, etc.”**

“It is almost a truism to say that any extension of popular control over an official system of government must be accompanied by some relaxation of the bonds of superior official authority.” (*M. C. R. para. 10*). “Our business is one of devolution, of drawing lines of demarcation, of cutting long-standing ties. The Government of India must give, and the provinces must receive ; for only so can the growing organism of self-government draw air into its lungs and live.” (*M. C. R. para 120*.) If the Government of India is to give, the Secretary of State and the Secretary of State in Council shall also have to do the same, *i. e.*, their control over the Government of India, and the latter's control over the Local Governments have to be relaxed simultaneously. This section accordingly enables the Secretary of State in Council to make rules regulating and restricting the exercise of the general powers of control vested in the Secretary of State, the Secretary of State in Council, and

the Governor-General in Council under Sections 2 (2), 33 and 45 of this Act, so that, as self-governing institutions develop in India, control from above, for the exercise of which the Secretary of State is answerable to Parliament, may be gradually relaxed in accordance with a recognized policy formulated in rules. This is more fully explained in paragraphs 291 and 292 of the Montagu-Chelmsford Report which run as follow—

“It has been of course impossible in practice that the affairs of a vast and remote Asiatic dependency should be administered directly from Whitehall : and, as we have seen, large powers and responsibilities have always been left by the Secretary of State to the Government of India and again by the Government of India to local Governments. At the same time the Secretary of State’s responsibility to Parliament has set very practical limits to the extent of the delegation which he can be expected to sanction. Now that His Majesty’s Government have declared their policy of developing responsible institutions in India we are satisfied that Parliament must be asked to assent to set certain bounds to its own responsibility for the internal administration of that country. It must, we think, be laid down broadly that in respect of all matters in which responsibility is entrusted to representative bodies in India, Parliament must be prepared to forego the exercise of its own power of control, and that this process must continue *pari passu* with the development of responsible government in the provinces and eventually in the Government of India. The process should, we think, begin with the conclusions arrived at on the report of the committee which will consider the question of transferred subjects. Having taken their report and the views of the Government of India upon it into consideration the Secretary of State would, we imagine, ask Parliament’s assent to his declaring by statutory orders which he would be empowered to make under the Act that such and such subjects in the various provinces had been transferred ; and when Parliament had assented to such orders the Secretary of State would cease to control the administration of the subjects which they covered. The discussion of such matters by Parliament in future would be governed by the fact of their transfer. We appreciate the difficulties of the situation ; but it must be recognized that it will be impossible for Parliament to retain control of matters which it has deliberately delegated to representative bodies in India. At the same time it will be necessary to ensure that the Secretary of State is in a position to furnish Parliament with any information upon Indian affairs that it desires ; and nothing in our proposals should be

taken as intended to impan the liability of the Government of India and the provincial Governments to furnish such information to the India Office at any time

“So far we have had in mind only the transferred subjects. But even as regards reserved subjects while there cannot be any abandonment by Parliament of ultimate powers of control, there should, as we have indicated already, be such delegation of financial and administrative authority as will leave the Government of India free, and enable them to leave the provincial Governments free, to work with the expedition that is desirable. On the purely financial side this delegation will involve an examination of the various codes and other regulations and orders, which we have already described as limiting too straitly the power of the authorities in India. This matter is already being examined in India and the Government of India will make proposals to the Secretary of State in Council. On the purely administrative side there are as we have seen no general orders, like those embodied in the financial codes, prescribing the matters for which the Secretary of State's sanction is required. But in an earlier chapter we gave an illustrative list of the subjects regarded as falling within that category ; and generally speaking it is well understood that all important new departures require his previous approval. The drawing of the line between the important and unimportant can only be left to the common sense of the authorities in India and at home. But we are agreed that a wider discretion ought henceforth to be left to the Governor-General in Council, and that certain matters which are now referred home for sanction might in future be referred merely for the information of the Secretary of State in Council. The exact definition of these particular matters must also be pursued at greater leisure, and the Government of India will take this question in hand. It will follow in such cases in future that when the policy of the executive Government in India is challenged, Parliament must be asked to accept the explanation that in accordance with deliberate policy the Government of India had been given discretion in respect of the topic in question and that for this reason the Secretary of State is not prepared to interfere with what has been settled in India. It is not part of our plan to make the official Governments in India less amenable to the control of Parliament than hitherto. It must be for Parliament itself to determine the limits which it will set to the exercise of its own powers. On the other hand intervention by Parliament may involve intervention by the Government of India in matters

which otherwise would be recognised as of provincial concern. It will be distracting both to the Government of India and the provincial Governments if the operation of this principle of discretionary delegation is left either to the idiosyncrasies of Secretaries of State, or to the disposition of party forces in Parliament. We hope therefore that Parliament will assent to facilitate the working of our reforms by a provision authorising the Secretary of State, by rules to be laid before Parliament, to divest himself of control of the Government of India in some specified matters even although these continue to be the concern of the official Governments, and to empower the Government of India to do likewise in relation to provincial Governments. On large matters of policy in reserved subjects there can of course be no question of such delegation.”—*M. C. R. paras 291—292.*

“We now revert to the question of delegation, considered as a supplementary aspect of the scheme of Reform. We are in full sympathy with the opinion expressed by the authors of the Joint Report, that previous sanction to decisions taken in India should be required in fewer cases than in the past, and that in some matters it will suffice in future if the Secretary of State asserts his control by means of a veto if necessary. Delegation of powers is so much a matter of technical detail that we consider our function to be confined to the duty of laying down guiding principles for its regulation. The basis of delegation that we recommend is as follows. that without prejudice to the further relaxation of control by the Secretary of State, the principle of previous consultation between the Secretary of State and the Government of India should be substituted in all cases where the previous sanction of the Secretary of State in Council has hitherto been required, but the Secretary of State should from time to time revise the list of subjects on which he requires such previous consultation, and inform the Government of India accordingly. Our recommendations would apply to all projects, both legislative and financial, subject to the reservations that may be necessary for the proper discharge of the Secretary of State’s ministerial responsibilities. In regard to administrative questions as distinct from those involving legislation or finance, the special need for delegation in the sense applied above does not arise. The administrative powers of the Government of India in this respect are not limited by any formal restrictions; but as a matter of constitutional practice, reference to the Home authorities is of course made on what are understood to be specially important administrative

matters. It is clear that that practice should be continued under the new system. We think it unnecessary to say more on this head than that the degree of discretion allowed in matters of public administration should be enhanced in general correspondence with the wider authority to be allowed in future in matters of legislation and finance. As regards the general principle we have suggested, we assume that consultation would be real and effective in the sense that the Secretary of State would receive ample notice of the Government of India's proposals, and that a full understanding between London and Delhi would be reached by a free interchange of views."—*C. C. R.*

The Joint Select Committee have given most careful consideration to the relations of the Secretary of State with the Government of India, and through it with the provincial governments. "In the relations of the Secretary of State with the Governor-General in Council the Committee are not of opinion that any statutory change can be made, so long as the Governor-General remains responsible to Parliament ; but in practice the conventions which now govern these relations may wisely be modified to meet fresh circumstances caused by the creation of a Legislative Assembly with a large elected majority. In the exercise of his responsibility to Parliament, which he cannot delegate to anyone else, the Secretary of State may reasonably consider that only in exceptional circumstances should he be called upon to intervene in matters of purely Indian interest where the Government and the Legislature of India are in agreement.

"This examination of the general proposition leads inevitably to the consideration of one special case of non-intervention. Nothing is more likely to endanger the good relations between India and Great Britain than a belief that India's fiscal policy is dictated from Whitehall in the interests of the trade of Great Britain. That such a belief exists at the moment there can be no doubt. That there ought to be no room for it in the future is equally clear. India's position in the Imperial Conference opened the door to negotiation between India and the rest of the Empire, but negotiation without power to legislate is likely to remain ineffective. A satisfactory solution of the question can only be guaranteed by the grant of liberty to the Government of India to devise those tariff arrangements which seem best fitted to India's needs as an integral portion of the British Empire. It cannot be guaranteed by statute without limiting the ultimate power of Parliament to control the administration of India, and without limiting the power of veto which rests in the Crown ; and

neither of these limitations finds a place in any of the Statutes in the British Empire. It can only therefore be assured by an acknowledgment of a convention. Whatever be the right fiscal policy for India, for the needs of her consumers as well as for her manufacturers, it is quite clear that she should have the same liberty to consider her interests as Great Britain, Australia, New Zealand, Canada, and South Africa. In the opinion of the Committee, therefore, the Secretary of State should as far as possible avoid interference on this subject when the Government of India and its Legislature are in agreement, and they think that his intervention, when it does take place, should be limited to safeguarding the international obligations of the Empire or any fiscal arrangements within the Empire to which His Majesty's Government is a party.

"The relations of the Secretary of State and of the Government of India with provincial governments should, in the Committee's judgment, be regulated by similar principles, so far as the reserved subjects are concerned. It follows, therefore, that in purely provincial matters, which are reserved, where the provincial government and legislature are in agreement, their view should ordinarily be allowed to prevail, though it is necessary to bear in mind the fact that some reserved subjects do cover matters in which the central Government is closely concerned. Over transferred subjects, on the other hand, the control of the Governor-General in Council, and thus of the Secretary of State, should be restricted in future within the narrowest possible limits, which will be defined by rules under sub-clause 3 of Clause 1 of the Bill.

"Rules under this clause will be subsidiary legislation of sufficient moment to justify their being brought especially to the notice of Parliament. The Secretary of State might conveniently discuss them with the Standing Committee whose creation has been recommended in this Report, and Parliament would no doubt consider the opinion of this body when the rules come, as it is proposed that they should do, for acceptance by positive resolution in both Houses. The same procedure is recommended by the Committee for adoption in the case of rules of special or novel importance under other clauses of the Bill. It must be for the Secretary of State to decide which of the many rules that will fall to be drafted by the Government of India can be sufficiently dealt with by the ordinary process of lying on the table of Parliament for a certain number of days. In deciding this point, however, he may naturally have recourse to the advice of the Standing Committee, should it happen to be



in session, and obtain their assistance in determining which rules deserve to be made the subject of the more formal procedure by positive resolution."—*J. S. C. R.*

According to the Rules framed under this Section the Secretary of State in Council is divested of control over the transferred subjects, save for such purposes as safeguarding the administration of the central subjects, arbitrating between two contending provinces, safeguarding Imperial interest and determining the position of the Government of India in respect of questions between India and other parts of the British Empire.

The Joint Committee, in their Second Report on Draft Rules, maintain that at this stage the relaxation of control should be carried further by a statutory mandate. The Committee take a similar view as to the undesirability of prescribing by a statute the extent to which the Secretary of State in Council is prepared to delegate to Provincial Governments the power of control over reserved subjects. Such delegation should be effected by orders of the Secretary of State in Council who will retain control over such expenditure as is likely to affect the prospects or the rights of All-India Service which he recruits and will continue to control and he will retain power to control the purchase of stores in the United Kingdom.

## § 2. "The purposes of the Government of India Act, 1919"

These purposes are clearly set forth in the Preamble, *viz.*, (1) the increasing association of Indians in every branch of Indian administration, (2) the gradual development of self-governing institutions, and (3) the progressive realization of responsible Government in British India as an integral part of the Empire.

## § 3. "Subjects other than Transferred Subjects."

"Transferred subjects" are those provincial subjects which are administered by a Minister or Ministers under the general supervision of the Governor of the Province.

The list of subjects transferred to Indian Ministers with certain reservations includes Local Self-Government, Medical Administration, Public Health, Sanitation, Education, Public Works, Agriculture, Fisheries, Co-operative Societies, Excise, Registration, Development of Industries, Adulteration of foodstuffs, Weights and Measures, and Religious and Charitable Endowments.

“Subjects other than transferred subjects” include those provincial subjects which are administered by the Governor and his Executive Council *i. e.*, the Reserved subjects and the subjects which are under the control of the Government of India but which are administered through the agency of the Governor in Council.

## PART II.

### THE REVENUES OF INDIA.

20. (1) The revenues of India<sup>1</sup> shall be received for and in the name of His Majesty, and shall, subject to the provisions of this Act, be applied for the purposes of the Government of India alone.

Application of revenues [1853, s. 27, 1858, ss. 2, 39, 42.]

(2) There shall be charged on the revenues of India alone :—

- (a) all the debts of the East India Company<sup>2</sup>; and
- (b) all sums of money, costs, charges and expenses which, if the Government of India Act, 1858, had not been passed, would have been payable by the East India Company out of the revenues of India in respect of any treaties, covenants, contracts, grants or liabilities existing at the commencement of that Act; and
- (c) all expenses, debts and liabilities lawfully contracted<sup>3</sup> and incurred on account of the Government of India; and

(d) all payments under this Act “except so far as is otherwise provided under this Act.”

(3) The expression “the revenues of India” in this Act shall include all the territorial and other revenues of or arising in British India, and, in particular,—

(i) all tributes and other payments<sup>4</sup> in respect of any territories which would have been receivable by or in the name of the East India Company<sup>5</sup> if the Government of India Act, 1858, had not been passed ; and

(ii) all fines and penalties<sup>6</sup> incurred by the sentence or order of any court of justice in British India, and all forfeitures for crimes<sup>7</sup> of any movable or immovable property<sup>8</sup> in British India ; and

(iii) all movable or immovable property in British India escheating<sup>9</sup> or lapsing for want of an heir or successor, and all property in British India devolving as *bona vacantia*<sup>10</sup> for want of a rightful owner.

(4) All property<sup>11</sup> vested in, or arising or accruing from property or rights vested, in His Majesty under the Government of India Act, 1858, or this Act, or to be received or disposed of by the Secretary of State in Council under this Act, shall be applied in aid of the revenues of India.

## § 1. "Revenues of India."

The following statement of the Revenues of India,—in India and in England,—is taken from the Budget of the Government of India, March 1920.

*Revised Estimate, 1919-20*

HEADS OF REVENUE.		IN INDIA.	IN ENGLAND.
		£	£
I.	Land Revenue ... ..	22,090,800	...
II.	Opium ... ..	2,990,800	...
III.	Salt ... ..	3,754,000	...
IV.	Stamps ... ..	7,223,100	...
V.	Excise ... ..	12,753,300	...
VI.	Provincial rates ... ..	36,100	...
VII.	Customs ... ..	14,919,500	...
VIII.	Income tax ... ..	15,771,000	...
IX.	Forest ... ..	3,659,800	...
X.	Registration ... ..	723,800	...
XI.	Tributes from Indian States... ..	626,000	...
XII.	Interest ... ..	1,306,700	3,073,400
XIII.	Post and Telegraphs ... ..	5,942,700	54,100
XIV.	Mint ... ..	1,669,600	100
XV.	Receipts by Civil Departments (such as Courts, Jails, Police, Ports and Pilotage, Education, Sanitation, Agriculture, Medical, Scientific, and Miscellaneous Departments.) ... ..	2,155,300	2,100
XVI.	Miscellaneous receipts (including receipts in aid of Super-annuation &c., from Stationery and Printing, Exchange &c) ... ..	1,732,400	130,400
XVII.	Railways (A) Net receipts from State Railways ... ..	21,328,700	48,600
	(B) Government Share of surplus profits and repayment of advances of interest from subsidised Company ... ..	11,900	218,100
XVIII.	Irrigation ... ..	5,843,600	...
XIX.	Other Public Works ... ..	363,500	...
XX.	Military receipts ... ..	1,106,300	5,666,000
XXI.	Marine ... ..	275,300	...
XXII.	Military Works ... ..	94,000	...
	Total ... ..	126,377,200	9,192,800
	Total Indian Revenues ... ..	£135,570,000	

## § 2. "Debts of the East India Company".

In the first half of the nineteenth century the East India Company on several occasions raised loans by public subscriptions in Great Britain and in India. The loans raised in India first bore interest at 5 per cent. But with the increasing stability of the Company's power, and the peace and good government that followed therefrom, it was found possible, in the fifth decade of the century, to borrow on a 4 per cent. basis. The then existing 5 per cent. loans were accordingly discharged, the holder of notes of these loans being allowed, from time to time, the option of transfer to 4 per cent. loans. Subsequently when the troubles of 1857-58 subsided, India, the government of which had meanwhile been taken over by the Queen-Empress, found it possible to raise money at  $3\frac{1}{2}$  per cent. and, in consequence notice of discharge of the then existing 4 per cent. loans was given, the holders of these loans being allowed the option of transferring into  $3\frac{1}{2}$  per cent. loans.

The transfer took place chiefly in the year 1894 and resulted in the then existing 4 per cent. loans together with a few miscellaneous loans such as Mysore Family loan and the East India Railway commuted stock ceasing to exist, re-appearing, however, as  $3\frac{1}{2}$  per cent. loans.—*"Guide Book for Investors in Govt. Securities"*

## § 3. "Debts and Liabilities lawfully incurred".

These evidently refer to the existing rupee loans which are of two kinds, *viz.*, non-terminable loans and terminable loans. The former kind of loan is repayable at the option of Government after a certain fixed date, after giving notice. In the case of terminable loans the Government undertake to repay the loan (a) on a certain fixed date or (b) not earlier than a certain fixed date and not later than another fixed period.

On the 30th September 1918 the national debt of India was 558 crores, but of Rs. 558 crores of public debt Rs. 424·7 crores were incurred for productive purposes *i. e.*, for railways and irrigation and the ordinary loans amounted to Rs. 133·3 crores which includes 40 crores of floating debt in the shape of treasury bills and temporary loans from the Presidency Banks.

## § 4. "Tributes and other Payments".

Many of the Native States pay tribute, varying in amount according to the circumstances of each case, to the British Government. This

tribute is frequently due to exchanges of territory or settlements, but is chiefly in lieu of former obligations to supply or maintain troops. The actual receipts in the form of tributes and contributions from Native States in the year 1911-12 amounted to £595,005 as stated in the Decennial Statement exhibiting the moral and material progress and condition of India, 1911-12. Among the Native States so paying tributes and contributions are the following ones —Jaipui, Kotah, Udaipui, Jodhpur, Bundi, the Shan States of Burma, State of Benares, Kaputalah, Travancore, Kathiawar, Baroda, and others

### § 5. “East India Company”.

*See notes under sec. 1*

### § 6. “Fines and Penalties.”

This refers to the fines and penalties imposed by the Criminal Courts on accused persons and in some cases by the Civil Courts e.g. fines imposed on persons for contempt of court or for disobedience of court's orders.

### § 7. “Forfeitures for Crimes of any movable and immovable property”.

*See 28 B. 314, 321.*

### § 8. “Movable and Immovable Property.”

See General Clauses Act [Act X of 1897, sec 3 (25) and (34)] where the terms are fully defined

### § 9. “Escheating.”

“Escheat” is a species of reversion; it is fruit of seignior, the Crown or Lord of the fee, from whom or from whose ancestor the estate was originally derived, taking it as a *ultimus hæres* upon the failure, natural or legal, of the intestate tenant's family. It differs from forfeiture (now abolished for treason or felony by the Forfeiture Act, 1870, 33 and 34 Vict, c. 23,) in that the latter is a penalty for a crime personal to the offender, of which the Crown is entitled to take advantage by virtue of its prerogative; while an escheat results from tenure only, and arises from an obstruction in the course of descent; it originated in feudalism, and respects the intestate's succession, so while forfeiture affects rents only, escheat operates on the inheritance

Escheat arises, then, from default of heirs, when the tenant dies without any lawful and natural born relations on the part of any of his ancestors, or when he dies without any lawful and natural born relations on the part of these ancestors from whom the estate descended, or where the intestate tenant, having been a bastard, does not leave any lawful descendants, since he cannot have any collateral descendants.—*Warton*.

### § 10 “Bona Vacantia.”

Things without any apparent owner which belong to the Crown, by virtue of its prerogative

### § 11 “All Property etc”

This sub-section is based on sec. 39 of the Government of India Act 1858 for which see *Documents I, p. 143*

**21.** “Subject to the provisions of this Act and rules made thereunder” the expenditure of the revenues of India<sup>1</sup>, both in British India and elsewhere, shall be subject to the control<sup>2</sup> of the Secretary of State in Council; and no grant or appropriation of any part of those revenues, or of any other property coming into the possession of the Secretary of State in Council by virtue of the Government of India Act, 1858 or this Act, shall be made without the concurrence of a majority of votes at a meeting of the Council of India:

<sup>1</sup> 1858, ss. 1, 41; 1916, 1st Sch., 1919 2nd Sch., pt. II.

Provided that a grant or appropriation made in accordance with provisions or restrictions prescribed by the Secretary of State in Council with the concurrence of a majority of votes at a meeting of the

council shall be deemed to be made with the concurrence of a majority of such votes.

### § 1. "Expenditure of the Revenues of India."

The following statement of the expenditure charged to the revenues of India, in India and in England is taken from the Revised Budget estimates of Government of India, March, 1920.

	£	£
<i>Direct Demands on the Revenues</i>		
1 Refunds and drawbacks ...	1,379,200	
2. Assignment and Compensations.	1,326,400	
3. Charges in respect of collections, viz.,—(a) Land revenue, (b) Opium (including cost of production), (c) Salt (including cost of production, (d) Stamps, (e) Excise, (f) Customs, (g) Income tax, (h) Forest, (z) Registration.		
4. Interest in India ...	9,264,400	192,800
5. Posts and Telegraphs ...	5,150,900	3,783,300
6. ....Mint ...	4,175,700	549,600
7. Salaries and Expenses of Civil Departments ...	295,700	60,500
8. Miscellaneous Civil charges ...	24,918,900	926,100
9. Famine Relief and Insurance ...	3,590,300	2,907,900
10. Railways ...	1,245,100	3,000
11. Irrigation ...	5,185,300	9,404,900
12. Other Public Works ...	4,106,200	125,300
13. Military Services ...	6,774,400	134,600
	50,612,400	9,479,200
TOTAL ...	118,024,900	27,566,900
GRAND TOTAL ...	£ 145,644,100	

### § 2 "Subject to the Control etc."

"The powers thus given to the Council in controlling expenditure are, however, far from being great as at first sight they seem to be, for they can only be exercised in regard to ordinary business of the administration. Orders involving large expenditure may be given by the Secretary



of State without either the consent or the knowledge of the Council. In dealing with questions affecting the relations of the Government with Foreign Powers, making War and Peace, prescribing the policy to be followed towards Native States, and generally in matters in which secrecy is necessary, the Secretary of State acts on his own authority"—*Strachey p. 68.*

**§ 3. "Made in accordance with the.....Secretary of State."**

*For the statutory powers of "the Secretary of State for India.—See notes under sec. 2. M. C. R. paras. 201 and 290—292 printed at pp. 493 and 561—562 of Documents, I deal with the ways and means as to how the Secretary of State for India is to divest himself of the control of the Government of India in certain specified matters and to empower the Government of India to do likewise in relation to Provincial Governments. See also Report of the Functions Committee, paras. 16—23 printed post.*

**22.** Except for preventing or repelling actual invasion of His Majesty's Indian possessions, or under other sudden and urgent necessity, the revenues of India shall not, without the consent of both Houses of Parliament, be applicable to defraying the expenses of any military operation carried on beyond the external frontiers<sup>1</sup> of those possessions by His Majesty's forces charged upon those revenues.

Application of revenues to military operations beyond the frontier. [1858, s. 55.]

**§ 1. "Defraying the expenses of any military operations beyond the external frontiers."**

The sanction of Parliament is necessary for any expenditure on military operations beyond the external frontiers of India (unless the expenditure is necessary for preventing or repelling actual invasion of India, *i. e.*, unless it is for defensive purposes).

Thus India's offer to place an expeditionary force at the disposal of the Crown for service in the Great War and to bear the expenses of that force as if it had stayed in this country, was formally accepted by Parliament, both Houses of which passed Resolutions giving constitution-

al ratification to the arrangements made by Government in pursuance of a Resolution unanimously passed by the Viceregal Council in that behalf. The Resolution moved by Mr. Asquith, the Prime Minister, in the House of Commons, was as follows —

“That His Majesty having directed a military force consisting of British and Indian troops charged upon the revenues of India to be despatched to Europe for service in the war in which this country is engaged, this House consents that the ordinary charges of any vessels belonging to the Government that may be employed in this expedition, which would have been charged upon the resources of India, had such troops or vessels remained in that country or seas adjacent, continue to be so chargeable, provided that if it shall be necessary to replace troops or vessels so withdrawn by other vessels or forces, then the expense of raising, maintaining and providing such vessels and forces shall be paid out of any moneys which may be provided by Parliament for the purposes of the said expedition.”

The section, as it stands, was first incorporated in the Government of India Act, 1858. It was urged that the section appeared to interfere with the prerogative of the Crown to make war or peace: the Earl of Derby who was in charge of the Bill thus explained the reasons which led to the enactment of this section :—

“There are, I believe, only two other subjects to which I need now direct your Lordships’ attention, and I allude to them because I think that, as far as they are concerned, the principle and the object of the Bill have been somewhat misunderstood. One relates to the employment of the Indian army, and the other relates to the admission to the Civil Service of India. The 55th clause deals with the first of those subjects; and it has been objected to that clause that it appears to interfere with the prerogative of the Crown, inasmuch as it provides that none of Her Majesty’s forces maintained out of the revenues of India shall be taken, except in cases of urgent emergency, beyond the frontiers of that country without the previous consent of Parliament. Now, it has been thought—and I confess that the wording of the clause makes it open to a construction which was not intended by its framers—it has been thought that that would be an interference with the undoubted prerogative of the Crown to make war or peace. But your Lordships will recollect that although there is no prerogative of the Crown more indisputable than that of making war or peace, the constitution has provided an equally indisputable check on the

practical exercise of that prerogative by rendering it necessary for the Crown to come to Parliament for the supplies necessary to raise and maintain the troops, without which it would be impossible to carry on a war. But with regard to the troops in India there is, and there can be, no such Parliamentary control; and consequently, if there were no such provision in the Bill as that to which I have referred, it might have been competent—I do not say there is any danger, but the danger might be possible under a Sovereign less constitutional than Her under whom we have the happiness to live—for the Crown to employ the Indian troops in wars wholly and entirely unsanctioned by Parliament, and the whole force of India might be carried to any portion of the world without the interposition of that practical pecuniary check to which I have alluded. In the Bill of the late Government, that principle of restricting the power of the Crown was enforced by a clause which provided that Her Majesty should not be enabled to send out of Asia (not out of India) any part of the forces maintained out of the Indian revenues. Now, as far as regards the restriction of the prerogative of the Crown, the principle is precisely the same, whether the provision be that the troops should not be sent beyond the limits of Asia, or that they should not be sent beyond the limits of our Indian possessions; and it would be perfectly competent to Parliament, in handing over to the Crown the Government of that vast empire to make the restriction even greater, and to provide that for the future the Indian forces should be placed on the footing of a militia, and should not be liable to serve beyond their own territory. But while the principle of the exception in the Bill of the late Government was the same as ours, the limitation which they put upon that principle allowed that which is the true and substantial danger in this matter. Within Asia the Crown might carry on a war with Persia, or with China, or even with Russia, with no further exception that the forces should not serve out of Asia, and that might be done without Parliament having any control over the expenditure, or any right to express an opinion on the propriety of the war. Our intention, however, is not to limit the prerogative of the Crown, but to protect the revenues of India; and consequently when we come to that clause I mean to propose in it an Amendment which will, I think, remove all ambiguity upon this point. It will be to the effect that, except for the purpose of preventing or repelling actual invasion of Her Majesty's Indian possessions, or in order to meet some sudden and urgent emergency, the revenues of India shall not, without

the consent of Parliament, be applicable to the expense of any military operations carried on beyond India by Her Majesty's forces chargeable on such revenues. That provision will impose a pecuniary check on the prerogative of the Crown in regard to the army of India, such as already exists in the case of all other portions of Her Majesty's forces.'—*Sec sec. 15 ante.*

**23.** (1) Such parts of the revenues of India as are remitted to the United Kingdom<sup>1</sup>, and all money arising or accruing in the United Kingdom<sup>2</sup> from any property or rights vested in His Majesty for the purposes of the Government of India, or from the sale or disposal thereof, shall be paid to the Secretary of State in Council, to be applied for the purposes of this Act.

Accounts of Secretary  
of State with Bank.  
[1858, s. 43]

(2) All such revenues and money shall, except as by this section is provided, be paid into the Bank of England to the credit of an account entitled "The Account of the Secretary of State in Council of India<sup>3</sup>."

(3) The money placed to the credit of that account shall be paid out on drafts<sup>4</sup> or orders, either signed by two members of the Council of India and countersigned<sup>5</sup> by the Secretary of State or one of his Under-Secretaries or his assistant Under-Secretary, or signed by the Accountant-General on the establishment of the Secretary of State in Council or by one of the two senior clerks in the department of that Accountant-General and countersigned in such manner as the

[1858, s. 43; 1859,  
s. 3; 1863, s. 16]

Secretary of State in Council directs; and any draft or order so signed and countersigned shall effectually discharge the Bank of England for all money paid thereon.

(4) The Secretary of State in Council may, for the payment of current demands<sup>6</sup> keep  
 [1858, s. 43, prov. ;  
 1860, c. 102, s. 7.] at the Bank of England such accounts as he deems expedient; and every such account shall be kept in such name and be drawn upon by such person, and in such manner, as the Secretary of State in Council directs.

(5) There shall be raised in the books of the Bank of England such accounts as  
 [1858, s. 45] may be necessary in respect of stock<sup>7</sup> vested in the Secretary of State in Council; and every such account shall be entitled "The Stock Account of the Secretary of State in Council of India."

(6) Every account referred to  
 [1858, ss. 43, 45 ;  
 1860, c. 102, s. 7.] in this Section shall be a public account.

### § 1. "The Revenues of India remitted to the United Kingdom."

Practically the whole of the Revenue of India is received in India; but about 25 per cent. of the disbursements of the Government of India are made in England: these disbursements are payments (amounting annually to about £25,000,000) for what are called the "Home Charges" *i.e.*, the payments which the Government of India must make in England, for interest on debt, superannuation and pensions, railway annuities and sinking funds, furlough allowances, Government Stores etc.

Remittance of this huge sum of money from India to the United King-

dom by means of what are termed Council Bills is a feature peculiar to the Indian System and is not, according to Prof. J. M. Keynes, to be paralleled elsewhere "It arises partly from the historical circumstance that the Government of India is the successor of a trading company, partly from the necessity under which the Government lies of making very large annual remittances to England"

These remittances are effected by one or other of the following methods

(1) The sale by the Secretary of State in London of Bills of Exchange (known as Council Bills) and Telegraphic Transfers to be met by the Government of India in India.

The present procedure is as follows—On each Wednesday a notice is exhibited at the Bank of England inviting tenders to be submitted on the following Wednesday for bills of exchange and telegraphic transfers on the Indian Government authorities at Calcutta, Madras and Bombay; cash must be paid for the bills in London as soon as they are allotted; but, on account of the time taken by the mail, they cannot be changed into rupees in Calcutta for at least a fortnight. A fortnight's interest is, therefore, lost and it is worth paying extra to obtain what are called "telegraphic transfers" by means of which rupees can be obtained at Calcutta almost as soon as the sovereigns are paid into the Secretary of State's account at the Bank of England.

(2) Occasionally when it has seemed improbable that the Secretary of State would be able to obtain by the sale of Bills and Transfers the amount estimated to be required from that source, gold held by the Government of India in India has been consigned to London. As the metallic money held by the Government of India is mostly in the Paper Currency Reserve against notes held in the Government Treasuries, the Government of India, when shipping gold to London to be used for the general purposes of the Secretary of State, must usually take gold from Paper Currency Reserve and cancel a corresponding amount of notes held in general treasuries or must transfer from their treasuries a corresponding amount in rupees to the Currency Reserve.

(3) The conditions in recent years have enabled transfer of gold from the Paper Currency Reserve, when required, to supplement the proceeds of Bills and Transfers to be effected in a more convenient and economical manner than in (2). Part of the Paper Currency Reserve is held in gold in London (taken from the proceeds of the sale of Council Bills) and

the Secretary of State can accordingly withdraw gold from it, when required, against either the cancellation of notes held in the Treasuries of the government of India or the transfer of rupees from those Treasuries to the Paper Currency Reserve in India.—*See Appendix I, Paras 26 & 27 of the Currency Commission Report, 1914.*

## § 2 “Money arising or accruing in the United Kingdom.”

This probably refers to the proceeds of the weekly sales of Council Bills, the loans raised in London and the revenues of India accruing in the United Kingdom. The last item amounted to £9,192,800 in 1920; the chief items making up this amount are—Government share of surplus profits and repayment of advances of interest from subsidised Railway Companies (£218,000), Military Receipts (£5,666,000) including a repayment of £5,370,000, by His Majesty's Government, and interest realised from Cash Balances, Reserves etc., (£3,073,400).

## § 3 “The Account of the Secretary of State in Council of India.”

Under an old standing arrangement the India Office maintains a minimum balance of £500,000 with the Bank of England with which, under the Acts 21 & 22 Vict. c. 106, and 22 & 23 Vict. c. 41, the account of the Secretary of State in the United Kingdom is kept.

## § 4 “Draft.”

A bill drawn by one person upon another for a sum of money; an order in writing to pay money.—*Wharton.*

## § 5. “Countersign”

The signature of a Secretary or other subordinate officer to any writing signed by the principal or superior to vouch for the authenticity of it.—*Wharton.*

## § 6. “Payment of Current Demands.”

“A considerable part of the disbursements made by the Secretary of State in Council in each year consists of very large payments which are made within very short periods. This is illustrated by the following figures showing the total payments in certain periods in 1911-12—1st to 5th April 1911, £3,624,304 (including £2,084,897 for annuities and interest, and £1,333,333 for Paper Currency Reserve investment); 1st to 5th July 1911, £3,815,710 (including £2,694,367 for annuities and interest, £487,757 for Gold Standard Reserve invest-

ment, and £301,800 for discharge of debt); 1st to 5th October, £2,462,000 (including £2,114,605 for annuities and interest); 1st to 5th January 1912, £3,100,857 (including £2,685,769 for annuities and interest and £75,000 for discharge of debt.)

"There are also other large payments, such as those for Railway stores, which have to be made at very short notice, but at dates that cannot be exactly foreseen, since they depend on the punctuality or otherwise of contractors.

"The money from which these payments are made is not received just at the moment at which it is needed. The greater part of it is derived from the sales of Council Bills and telegraphic transfers which, though in unfavourable years they are liable to cease for considerable periods, take place as a rule every week. Sometimes, but in many years not more than once in the year, large sums are received in a short time as the proceeds of loan or loans.

"It is thus necessary, as a rule, in preparation for the periods of heavy payments, to accumulate the weekly receipts so as to have them in hand or at call for use when the money is required.

"The whole of the working balance thus required might be allowed to remain at the credit of the Secretary of State at the Bank of England, in which case the revenues of India would receive no interest on it; but the practice followed since 1858 has been to keep a certain part of the balance at the Bank and to lend the remainder at interest.

"The usual method is to lend to certain banks, discount houses, and stock brokers of high standing, whose names are included in an approved list, now containing 62 names. The list is revised periodically, and applications for admission are carefully considered with reference to the standing and resources of the applicants and the nature of their business. Loans to borrowers on the approved list are granted as a rule for periods from three to five weeks, occasionally for six weeks, so that the whole balance could, if needed, be called in within six weeks.

"The Accountant-General informs the Secretary of State's broker daily of the amount of loans that may be renewed, the amount of new loans that may be placed, or the amount that must be called. He also furnishes the dates for the maturity of the renewals and new loans, so that money may be available to meet requirements. The broker is responsible for obtaining the best possible rate of interest. The amount of a loan is not paid out from the Secretary of State's account at the Bank



of England until the security has been lodged at the Bank. The securities which the broker is authorized to accept are as follow :—Exchequer bills and bonds, Treasury bills, Parliamentary stocks and annuities of the United Kingdom, securities on which the interest is guaranteed by Parliament ; India stock, debentures, bonds and bills, Rupee paper, guaranteed debenture scrips (fully paid) or bonds of Indian Railway Companies ; London stock and bills, Metropolitan consolidated stock, Corporation of London debentures, Metropolitan Water Board bills, and “B” stock. The particulars of each loan transactions are submitted each week to the Finance Committee for approval and each month to the Auditor of the accounts of the Secretary of State in Council.”

The weely lists are now submitted to the Secretary of State and the Council.—*Extract from the Memorandum on Indian Office Balances. Vide Appendix I, page 7, Currency Commission Report, 1914.*

### 7. “Stock”

Means the public funds considered merely as perpetual annuities, redeemable at the pleasure of the Government. It also connotes the Share Capital of a public company yielding dividend.

**24.** The Secretary of State in Council by power of attorney executed by two members of the Council of India and countersigned by the Secretary of State or one of his Under-Secretaries or his assistant Under-Secretary, may authorise all or any of the cashiers of the Bank of England—

Powers of attorney  
for sale or purchase of  
stock and receipt of  
dividends. [1858, s.  
47 ; 1863 s. 16.]

(a) to sell and transfer all or any part of any stock standing in the books of the Bank to the account of the Secretary of State in Council ; and

(b) to purchase and accept stock for any such account ; and

(c) to receive dividends on any stock standing to any such account ;

and, by any writing signed by two members of the Council of India and countersigned as aforesaid, may direct the application of the money to be received in respect of any such sale or dividend :

Provided that stock shall not be purchased or sold and transferred under the authority of any such general power of attorney, except on an order in writing directed to the chief Cashier and chief Accountant of the Bank of England, and signed and countersigned as aforesaid.

**25.** All securities held by or lodged with the Bank of England in trust for or on account or on behalf of the Secretary of State in Council may be disposed of, and the proceeds thereof may be applied, as may be authorised by order in writing signed by two members of the Council of India and countersigned by the Secretary of State or one of his Under-Secretaries or his assistant Under-Secretary, and directed to the chief Cashier and chief Accountant of the Bank of England.

Provisions as to securities. [1858, s. 48 ; 1863, s. 16]

*See Notes Under Sec 23*

**26.** (1) The Secretary of State in Council shall, within the first twenty-eight days during which Parliament is sitting next after the first day of May in every year, lay before both Houses of Parliament—

Accounts to be annually laid before Parliament. [1858, s. 53 ; 1916 1st Sch.].

- (a) an account, for the financial year preceding that last completed, of the annual produce of the revenues of India, distinguishing the same under the respective heads thereof, in each of the several provinces; and of all the annual receipts and disbursements at home and abroad<sup>1</sup> for the purposes of the government of India, distinguishing the same under the respective heads thereof;
- (b) the latest estimate of the same for the financial year last completed;
- (c) accounts of all stocks, loans, debts and liabilities chargeable on the revenues of India, at home and abroad,  
[1858, s. 53; 1874, c. 3, s. 15] at the commencement and close of the financial year preceding that last completed, the loans, debts and liabilities raised or incurred within that year, the amounts paid off or discharged during that year, the rates of interest borne by those loans, debts and liabilities respectively, and the annual amount of that interest;
- [d] *Repealed by the Second Sch. to the Government of India Amendment Act, 1916;*
- (e) a list of the establishment, of the Secretary of State in Council, and the salaries and allowances payable in respect thereof.

(2) If any new or increased salary or pension of fifty pounds a year or upwards has been granted or created within any year in respect of the said establishment, the particulars thereof shall be specially stated and explained at the foot of the account for that year.

(3) The account shall be accompanied by a statement, prepared from detailed reports from each province, in such form as best exhibits the moral and material progress and condition of India.<sup>3</sup>

**1. "The Secretary of State... ..before both Houses of Parliament"**

"At some time or other during the Session of Parliament, usually towards the end, the House of Commons goes to the Committee on the East India Revenue Accounts; and the Secretary of State for India or his representative in the House of Commons, on the motion to go into Committee, makes a statement in explanation of the accounts of the Government of India. The debate which takes place on this statement is commonly described as the *India Budget Debate*. The resolution in Committee is purely formal".—*Ilbert*.

**§ 2. "Disbursements at home and abroad."**

*See notes under Sec. 21.*

**§ 3. "The account shall be.....Moral and Material Progress and Condition of India"**

This is the annual 'moral and material progress report'. A special report is published at the expiration of each period of 10 years, giving a very full and interesting account of the general condition of India at that date. The last of these Decennial Reports was the 5th Decennial Report published in 1911-12 embodying the annual reports for the 10 years from 1902

27. (1) His Majesty may, by warrant<sup>1</sup> under

Audit of Indian ac-  
counts in United King-  
dom. [1858, s. 52.]

His Royal Sign Manual, counter-  
signed by the Chancellor of the  
Exchequer, appoint a fit person to  
be auditor<sup>2</sup> of the accounts of the Secretary of State  
in Council, and authorise that auditor to appoint and  
remove such assistants as may be specified in the  
warrant.

(2) The auditor shall examine and audit the  
accounts of the receipt, expenditure and disposal in  
the United Kingdom of all money, stores and pro-  
perty applicable for the purposes of this Act.

(3) The Secretary of State in Council shall, by  
the officers and servants of his establishment,<sup>3</sup> pro-  
duce and lay before the auditor all such accounts,  
accompanied by proper vouchers for their support,  
and submit to his inspection all books, papers and  
writings having relation thereto.

(4) The Auditor may examine all such officers  
and servants of that establishment, being in the United  
Kingdom, as he thinks fit, in relation to such accounts  
and the receipt, expenditure or disposal of such money,  
stores and property, and may for that purpose, by writ-  
ing signed by him, summon before him any such  
officer or servant.

(5) The auditor shall report to the Secretary of  
State in Council his approval or disapproval of the  
accounts aforesaid, with such remarks and observa-

tions in relation thereto as he thinks fit, specially noting cases (if any) in which it appears to him that any money arising out of the revenues of India has been appropriated to purposes other than those to which they are applicable.

(6) The auditor shall specify in detail in his reports all sums of money, stores and property which ought to be accounted for, and are not brought into account or have not been appropriated in conformity with the provisions of the law, or which have been expended or disposed of without due authority, and shall also specify any defects, inaccuracies or irregularities which may appear in the accounts, or in the authorities, vouchers or documents having relation thereto.

(7) The auditor shall lay all his reports before both Houses of Parliament, with the accounts of the year to which the reports relate.

(8) The auditor shall hold office during good behaviour.

(9) There shall be paid to the auditor and his assistants, out of the revenues of India, "or out of moneys provided<sup>4</sup> by Parliament" such salaries as His Majesty, by warrant signed and countersigned as aforesaid, may direct.

(10) The auditor and his assistants (notwithstanding that some of them do not hold certificates from the Civil Service

[1881, c. 63, s. 1; 1916, 1st. Sch.]

Commissioners) shall, for the purposes of superannuation or retiring allowance and their legal personal representatives shall, for the purposes of gratuity, be in the same position as if the auditor and his assistants were on the establishment of the Secretary of State in Council.

### § 1. "Warrant."

Warrant means a "writ conferring some right or authority"

### § 2. "Auditor."

"Auditor" is a person who examines accounts and evidences of expenditure. The duties of the India Office auditor as to Indian revenues and expenditure correspond in some respects to the duties of "the Comptroller and Auditor General with respect to the revenues of United Kingdom"

*Audit*—means "an examining of accounts. Audit may be either detailed or administrative, and is usually both. Detailed audit is a comparison of vouchers with entries of payment in order that the party whose accounts are audited may not debit his employer with payments not in fact made.

"An administrative audit is a comparison of payments with authorities to pay in order that the party whose accounts are audited may not debit his employer with payments not authorized. If on either branch of audit an improper entry is discovered the auditor surcharges the party whose accounts are audited, whereby the payment must be made by such party out of his own pocket. Where no fraud is suspected, however, and when there has been no negligence, it is common for the surcharge to be remitted (see *Poor Law Audit Act, 1848, 11, 12 Vict. c. 91 sec. 4*), especially where the party whose accounts are audited has given his service gratuitously."—*Wharton*.

### § 3. "Establishment."

*See notes under Sec. 2*

### § 4. "Or out of moneys provided by Parliament."

*See notes on "Salary of Secretary of State" under Section 2,*

## PART III.

## PROPERTY, CONTRACTS, AND LIABILITIES.

28. (1) The Secretary of State in Council may, with the concurrence of a majority of votes at a meeting of the Council of India, sell and dispose of any real or personal estate for the time being vested in His Majesty for the purposes of the government of India, and raise money on any such real or personal estate by way of mortgage or otherwise and make the proper assurances for any of those purposes, and purchase and acquire any property. .

Power of Secretary of State to sell, mortgage and buy property. [1916, 1st Schedule.]

(2) Any assurance relating to real estate, made by the authority of the Secretary of State in Council, may be made under the hands and seals of two members of the Council of India.

(3) All property acquired in pursuance of this section shall vest in His Majesty for the purposes of the government of India.

The word "*Assurances*" means "legal evidence of the transfer of property called *common* assurances by which everyman's property is secured to him, and controversies, doubts and difficulties prevented and removed."—*Wharton*.

29. (1) "Subject to the provisions of this Act regarding the appointment of a High Commissioner for India", the Secretary of State in Council may, with the concurrence of a majority of votes at a

Contracts of Secretary of State. [1858, s. 40; 1919, 2nd Sch. pt. II.] 1859, s. 5.



meeting of the Council of India, make any contract \*  
for the purposes of this Act

(2) Any contract so made may  
[1859, s. 5.]      be expressed to be made by the Sec-  
retary of State in Council.

(3) Any contract so made which, if it were made  
between private persons, would be by law required to  
be under seal, may be made, varied or discharged  
under the hands and seals of two members of the  
Council of India.

(4) Any contract so made which, if it were made  
between private persons, would be by law required to  
be signed by the party to be charged therewith, may  
be made, varied or discharged under the hands of two  
members of the Council of India.

(5) Provided that any contract for or relating to  
the manufacture, sale, purchase or  
[1903, ss. 1, 2.]      supply of goods, or for or relating to  
affreightment<sup>1</sup> or the carriage of goods, or to insur-  
ance,<sup>2</sup> may, subject to such rules and restrictions as  
the Secretary of State in Council prescribes, be made  
and signed on behalf of the Secretary of State in  
Council by any person upon the permanent establish-  
ment<sup>3</sup> of the Secretary of State in Council who is  
duly empowered by the Secretary of State in Council  
in this behalf. Contracts so made and signed shall  
be as valid and effectual as if made as prescribed

by the foregoing provisions of this section. Particulars of all contracts so made and signed shall be laid before the Secretary of State in Council in such manner and form and within such times as the Secretary of State in Council prescribes.

[1903, ss. 1,3.]

(6) The benefit and liability of every contract made in pursuance of this section shall pass to the Secretary of State in Council for the time being.

[1859, s. 5.]

### § 1. "Affreightment."

It means the contract of a shipowner to carry goods for the payment called "freight."

### § 2 "Insurance."

It means "the act of providing against a possible loss, by entering into a contract with one who is willing to give assurance, that is, to bind himself to make good such loss should it occur. In this contract, the chances of benefit are equal to the insurer and the insured. The first actually pays a certain sum and the latter undertakes to pay a larger, if an accident should happen. The one renders his property secure, the other receives money with the probability that it is clear gain".—*Wharton*.

### § 3. "Permanent Establishment."

*See notes under Sec. 17 on the establishment of Secretary of State in Council.*

**29A.** "His Majesty may by Order in Council make provision for the appointment of a High Commissioner for India in the United Kingdom, and for the pay, pension, powers, duties, and conditions of employment of the High Commissioner and of his assistants ;

High Commissioner  
for India. [1919, s.  
35.]

and the Order may further provide for delegating to the High Commissioner any of the powers previously exercised by the Secretary of State or the Secretary of State in Council whether under this Act or otherwise in relation to making contracts, and may prescribe the conditions under which he shall act on behalf of the Governor-General in Council or any local government."

This section carries out the recommendation of Lord Crewe's Committee to appoint a High Commissioner for India, to be paid out of Indian revenues, who will preform for India functions of agency, as distinguished from political functions, analogous to those now performed in the offices of the High Commissioners of the Dominions. The Crewe Committee's recommendations are as follows—

"We are satisfied that the time has come for a demarcation between the agency work of the India Office and its political and administrative functions, and that the step would commend itself to all classes of opinion in India as making a stage towards full Dominion status. Accordingly, we recommend that preliminary action should be taken with a view to the transfer of all agency work to a High Commissioner for India or some similar Indian Governmental representative in London. We suggest that, in the first instance, communications should be entered into with the Government of India with the object of transferring to the direct control of that Government the Stores Department and also the Accountant-General's Department (subject to any necessary reservations, including the retention of work connected with higher finance), and that the Government of India should at the same time be invited to make suggestions for the transfer to their control of any other agency business, such as that transacted by the Indian Students Department."

It will not be out of place here to consider the position and functions of colonial High Commissioners and Agents-General :—

"Just as the Crown sends to each Dominion a Governor or Governor-General, so the Colony or Dominion sends to London an Agent-General or High Commissioner, to represent it in dealings with the Secretary of State and other Imperial and British authorities, as well as with private

firms and individuals. This valuable system of exchange of ideas goes back to the days of the Great Benjamin Franklin; and the opportunities it affords for strengthening the bonds of social, literary and economic intercourse between the United Kingdom and the Dominions, are almost unlimited."—*Jenks's "The Government of the British Empire", p. 71*

"The Colonies have representatives in London, High Commissioners for the four great Dominions, Agents-General for the Australian States. \* \* \* The Agents-General and the High Commissioners are Government officials who hold their office under Acts of Parliament for definite periods, and who cannot be easily removed from office by any Government. Further, this tenure is in no small measure due to the fact that it is the custom for the office to be held by a person who has held high political office in the Colony or Dominion, often in the case of the Australian colonies by the late Prime Minister. But practically in every case the appointment is made from the ranks of the political supporters of the Ministry of the day, and in default of a Prime Minister, then a Minister who has social ambitions or who is too big to play a second part at home is despatched to England. \* \* \* It is an agreeable peculiarity of High Commissioners to deem themselves in some sense not general agents, as the popular mind is liable to deem them but persons charged with ambassadorial privileges, and this belief is rightly encouraged by the British Government in the sense that they are shown marks of courtesy and distinction appropriate to the functions which they think they hold. But the essential distinction between an Ambassador and a High Commissioner lies in the fact that the former is in the confidence of his Government while the latter is not."

—*Keitli's Imperial Unity and the Dominions, pp. 536–541*

### 30. (1) The Governor-General in Council and

Power to execute assurances, &c., in India.  
[1859, ss. 1, 2; 1912, s. 1 (1); 1916, 1st Sch.]

any local government may, on behalf and in the name of the Secretary of State in Council, and subject to such provisions or restrictions as the Secretary of State in Council, with the concurrence of a majority of votes at a meeting of the Council of India, prescribes, sell and dispose of any real or personal estate whatsoever

in British India within the limits of their respective governments, for the time being vested in His Majesty for the purposes of the government of India, or raise money on any such real or personal estate by way of mortgage or otherwise, and make proper assurances for any of those purposes, and purchase or acquire any property in British India within the said respective limits, and make any contract for the purposes of this Act.

(1A) “A local Government may on behalf and in the name of the Secretary of State  
[1919, s. 2 (1).] in Council raise money on the security of revenues allocated to it under this Act, and make proper assurances for that purpose, and rules made under this Act may provide for the conditions under which this power shall be exercisable.”

This sub-section has been inserted to regularise the raising of loans by local governments on the special security of their own provincial revenues — *J. S. C. R.*

(2) Every assurance and contract made for the purposes of “sub-section (1)” of this section shall be executed by such person  
[1859, s. 2 ; 1870, c. 59, s. 2 ; 1919, 2nd Sch. Pt. II.] and in such manner as the Governor-General in Council by resolution directs or authorises, and if so executed may be enforced by or against the Secretary of State in Council for the time being.

(3) All property acquired in pursuance of this section shall vest in His Majesty  
[1859, s. 1.] for the purposes of the Government of India.

**31.** The Governor-General in Council, and any

Power to dispose of  
 escheated property, etc.  
 [1853, s. 27; 1919, 2nd  
 Sch., Pt. II.]

other person authorised by any Act  
 passed in that behalf by the "Indian  
 legislature", may make any grant or

disposition of any property in British India accruing  
 to His Majesty by forfeiture, escheat or lapse, or by  
 devolution as *bona vacantia*, to or in favour of any  
 relative or connection of the person from whom the  
 property has accrued, or to or in favour of any other  
 person.

**32.** (1) The Secretary of State

Rights and liabilities  
 of Secretary of State in  
 Council. [1858, s. 65,  
 1859, s. 6.]

in Council may sue and be sued<sup>1</sup>  
 by the name of the Secretary of

State in Council, as a body corporate.<sup>2</sup>

(2) Every person shall have the same remedies

against the Secretary of State in  
 [358, s. 65.] Council as he might have had against

the East India Company if the Government of India  
 Act, 1858, and this Act had not been  
 21 & 22 Vict. c. 106. passed.

(3) The property for the time being vested in

His Majesty for the purposes of the  
 21 & 22 Vict. c. 106. government of India shall be liable

to the same judgments and executions as it would  
 have been liable to in respect of liabilities lawfully  
 incurred by the East India Company if the Govern-  
 ment of India Act, 1858, and this Act had not been  
 passed.

(4) Neither the Secretary of State nor any member of the Council of India shall be [1858, s. 68 ; 1859, s. 2.] personally liable in respect of any assurance or contract made by or on behalf of the Secretary of State in Council, or any other liability incurred by the Secretary of State or the Secretary of State in Council in his or their official capacity, nor in respect of any contract, covenant or engagement of the East India Company ; nor shall any person executing any assurance or contract on behalf of the Secretary of State in Council be personally liable in respect thereof ; but all such liabilities, and all costs and damages in respect thereof, shall be borne by the revenues of India.

### § 1. "May sue and be sued."

The Act lays down that the revenues of India shall be received for and in the name of His Majesty and subject to the provisions of this act be applied for the purposes of Government of India alone. (Sec 21.) . It charges on the revenues all expenses, debts, and liabilities lawfully contracted and incurred on account of the Government of India and throws upon the Secretary of State in Council the control of the expenditure both in British India and elsewhere (Secs. 20, 21, 23-6). " It follows from this position of the Secretary of State that power to deal with property situated in India or to make contracts can only be exercised by the Governor-General in Council or any local Government, subject to restrictions prescribed by the Secretary of State with the approval of a majority of the Council (Sec. 30). It follows also that from his control of the assets and revenues of India the Secretary of State is deeply concerned in financial affairs and a further consequence is that according to this section the Secretary of State in Council is a legal entity with powers to sue and be sued. Any person has the same remedies against the Secretary of State in Council as against the East India Company but he and the mem-

bers of his Council and officers acting on his behalf are exempt from personal liability, though the revenues of India remain liable, and execution may be had against property vested in the Crown. The Government of India in this regard is in an inferior position to a Dominion Government which, primarily, is not liable at all to suits though in most cases in the Dominions that exemption has been greatly limited by legislation. On the other hand it is contrary to the practice in the Dominions to allow execution against governmental property in any case. But of course the power to bring actions does not extend to cases where the measures taken by the Government are political in nature, in which case even the East India Company would have been held to be exempt from suit."—(Keith).

"In British India the relations between the Government of India and the subject differ from those which exist in England between the Crown and the subject. This difference is explained by the history of the development of the Government of India. The East India Company commenced as a trading corporation, and by degrees assumed the function of a sovereign power. When the Government was taken over by the Crown, the Crown stepped into the place of the Company, and the relations between the Crown and the subject so far as rights of suit were concerned, remained practically the same as they were at the time of the extinction of the Company.

"There have been several cases in which the liability of the Secretary of State in Council as representing the Government, or rather the liability of the revenues of India for the acts or defaults of the servants of the Government in India has been the subject of judicial consideration. The latest decision on this subject is that of the *Secretary of State v Cockcroft* (1914—39 M 351). In that case the plaintiff claimed damages for injuries sustained by him in a carriage accident which was alleged to have been due to the negligent stacking of gravel on a military road maintained by the P. W. D. of the Government. It was held that the act was done by the servant of Government in exercise of the sovereign power of the Government and that therefore the revenues of India were not liable. Acts done by the Government such as might have been done by private individuals, or by municipalities or similar bodies, stand upon a different footing. They are not done in exercise of sovereign power. Thus in the leading case of the *Peninsular and Oriental Steam Navigation Company vs. Secretary of State* (1861-5 Bom. H. C. R. App



1) it was held that the revenues of India were responsible for the negligent acts of servants of Government who were working in a Government dockyard. It is sometimes not quite easy to say what is a "Sovereign Act." The authority of the *P. and O. S. N. Co. vs. Secretary of State* has been recently upheld in *Secretary of State vs. Moment* (1912, 40 L. R. I. A. 48). In that case the Judicial Committee held that Sec. 41 of an Act (No. 4 of 1898) passed by the Burma Legislative Council, which enacted that no Civil Courts shall have jurisdiction to determine any claim to any right over land as against the Government was *ultra vires*, as being in contravention of Sec. 65 of the Government of India Act, 1858. An attempt was made in the Bill relating to the Government of India which was recently introduced to give legislative Councils power to bar suits against Government but this proposal was dropped in Committee.—*Sir E. J. Trevelyan in the Journal of the Society of Comparative Legislation, Jan. 1917.*

## § 2. "As a body Corporate."

A body corporate or corporation is "an artificial person established for preserving in perpetual succession certain rights, which being conferred on natural persons only, would fail in process of time. It is either aggregate, consisting of many members, or sole, consisting of one person only, as a person. \*\*\* It is by virtue of the Sovereign's prerogative, exercised by a charter, or of an Act of Parliament or of prescription, that the artificial personage called a corporation, whether sole or aggregate, civil or ecclesiastical is created. The royal charter gives it a legal immortality, and a name by which it acts and becomes known. It has power to make bye-laws for its own government, and transacts its business under the authority of a common seal—its hand and mouthpiece; it has neither soul nor tangible form, so it can neither be outlawed nor arrested; it only enjoys a legal entity, sues, and is sued by its corporate name, and holds and enjoys property by such name. The several members of a corporation and their successors constitute but one person in law. \* \* \* \* The distinction between corporations and trading partnerships is, that in the first the law sees only the body corporate and knows not the individuals, who are not liable for the contracts of the corporation in their private capacity, their share in the capital only being at stake but in the latter the law looks not to the partnership, but to the individual members of it, who are therefore answerable for the debts of the firm to the full extent of their assets".—*Wharton.*

## PART IV.

## THE GOVERNOR-GENERAL IN COUNCIL.

## General Powers and Duties of Governor-General in Council.

33. "Subject to the provisions of this Act and rules made thereunder" the superintendence, direction and control of the civil and military government of India is vested in the Governor-General in Council<sup>1</sup>, who is required to pay due obedience<sup>2</sup> to all such orders as he may receive from the Secretary of State.

General powers and duties of Governor-General in Council. (1772, s. 9; 1793, s. 40; 1833, s. 39; 1893, s. 1 (2); 1919, 2nd Sch. Pt. II.)

## § 1. "The Governor-General in Council."

The Governor-General in Council is generally described as the Government of India, a description which is recognised by Indian legislation [Act X of 1897, sec. 3 (22).]

*The statutory powers of the Governor-General in Council may be summarised as follow—*

1. The Governor-General in Council may on behalf and in the name of the Secretary of State in Council sell and dispose of any real or personal estate whatsoever in British India; and he may dispose of escheated property etc. [Secs. 30, 31.]

2. Subject to the provisions of this Act and rules made thereunder the superintendence, direction and control of the civil and military Government of India is vested in the Governor-General in Council. [Sec. 33.]

3. The Governor-General in Council appoints the places of meetings of the Executive Council. [Sec. 39 (1).]

4. All orders and other proceedings of the Governor-General in Council are expressed to be made by the Governor-General in Council. [Sec. 40 (1).]

§ 1.] THE GOVERNOR-GENERAL IN COUNCIL.

5. The Governor-General in Council may not, without the express order of the Secretary of State in Council, except in certain cases of emergency, either declare war or commence hostilities or make any treaties. [Sec. 44 (1).]

6. When the Governor-General in Council commences any hostilities or makes any treaty, he is to communicate the same immediately, with the reasons therefor, to the Secretary of State [Sec. 44 (3).]

7. The orders of the Governor-General in Council shall be obeyed by every local Government. [Sec. 45.]

8. The powers of superintendence, direction and control over local Governments vested in the Governor-General in Council under this Act shall, in relation to transferred subject be exercised only for such purposes as may be specified in the rules made under this Act.

9. The Governor-General in Council may, after obtaining an expression of opinion from the Local Governments and the Local Legislatures affected, by notification, with the sanction of His Majesty previously signified by the Secretary of State in Council, constitute a new Governor's province or place part of a Governor's province under the administration of a Deputy Governor to be appointed by the Governor. (Sec. 52A.)

10. The Governor-General in Council may declare any territory in British India to be a "backward" tract. [Sec. 52A (2).]

11. The Governor-General in Council may, by notification, with the sanction of His Majesty previously signified by the Secretary of State in Council, constitute a new Province under a Lieutenant Governor. [Sec. 53 (2)]

12. With the approval of the Secretary of State in Council the Governor-General in Council may, by notification, create a Council in any Province under a Lieutenant-Governor. [Sec. 55 (1).]

13. The consent of the Governor-General in Council is necessary for a Lieutenant-Governor in making rules and orders for more convenient transaction of business in his Executive Council. [Sec. 57.]

14. The Governor-General in Council may with the approval of the Secretary of State and by notification take any part of British India under his immediate authority and management. [Sec. 59.]

15. The Governor-General in Council may by notification declare, appoint or alter boundaries of Provinces. (Sec. 60.)

16. The first standing orders providing for conduct of business and the procedure to be followed in either Chamber of the Indian Legislature are to be made by the Governor-General in Council. [Sec. 65 (6).]

17. The estimated annual expenditure and revenue of the Governor-General in Council shall be laid in the form of a statement before both Chambers of the Indian Legislature. (Sec. 67A)

18. The Governor-General in Council may, at the request of a Local Government make regulations for the peace and good government of any part of British India to which sec 71 for the time being applies. [Sec. 71 (1)]

19. The Governor-General in Council may, with the approval of the Secretary of State in Council, make rules as to the membership of local legislatures. [Sec. 76 (3).]

20. The Governor-General in Council may, by notification, with the sanction of His Majesty previously signified by the Secretary of State in Council, constitute new Local Legislatures. [Sec. 77 (1)]

21. The Governor-General in Council may, by notification, extend the provisions of this Act relating to the Legislative Council of the Lieutenant-Governor to any province for the time being under a Chief Commissioner. [Sec. 77 (2).]

22. The sanction of the Governor-General in Council is necessary for the Local Government of a Province other than a Governor's Province to make rules of business at meetings of its Legislative Council. [Sec. 80 (3).]

23. The sanction of the Governor-General in Council is necessary for the Local Government of any Province (other than a Governor's Province) to make rules for the conduct of the Legislative business in its Council. [Sec. 80 (4).]

24. The Governor-General in Council may appoint persons to act as additional judges of any High Court, for such period, not exceeding two years, as may be required. [Sec. 101 (2).]

25. On the occurrence of a vacancy in the office of Chief Justice or an ordinary Judge of a High Court, and during any absence of such a Chief Justice or ordinary Judge the Governor-General in Council shall, in the case of the Calcutta High Court, appoint one of its other Judges to act as Chief Justice [Sec. 105 (1)] and appoint qualified persons to act as ordinary Judges. [Sec. 105 (2).]

26. The Governor-General in Council may, by order, alter the local limits of Jurisdiction of High Courts. [Sec. 109.]

27. The order in writing of the Governor-General in Council is full justification for an act in any Court in India. [Sec. 111]

28. On the occurrence of a vacancy in the office of Advocate-General of Bengal, the Governor-General in Council may appoint a person to act as Advocate-General [Sec 114 (3)]

29. In case of difference of opinion on any question brought before a meeting of the Governor-General's Executive Council the Governor-General in Council shall be bound by the opinion or decision of the majority. [Sec. 41.]

30. Where any matter is required to be prescribed or regulated by rules under this Act and no special provision is made as to the authority by whom the rules are to be made, the rules shall be made by the Governor-General in Council with the sanction of the Secretary of State in Council. [Sec. 129A (1)]

In addition to the above statutory powers, the Governor-General in Council, as representing the Crown in India, "enjoys such of the powers, prerogatives, privileges and immunities appertaining to the Crown as are appropriate to the case and consistent with the system of law in force in India. The Governor-General in Council has also, by delegation, powers of making treaties and arrangements with Asiatic States, of exercising jurisdiction and other powers in foreign territory and of acquiring and ceding territory. Moreover, the Government of India has powers, rights and privileges derived, not from the English Crown, but from the native princes of India, whose rule it has superseded. For instance, the rights of the Government in respect of land and minerals in India are different from the rights of the Crown in respect of land and minerals in England." (*Ilbert*).

## § 2. "Pay due obedience to all such orders... the Secretary of State.

These words raised the important question of the relation between the Secretary of State and the Viceroy and the Governor-General in Council. The question was raised during the Viceroyalty of Lord Northbrook, when Lord Salisbury was Secretary of State. Mr. Bernard Mallet's memoir of Lord Northbrook contains the following noteworthy remarks upon the

subject by Lord Cromer who, as Major Baring, was Private Secretary to Lord Northbrook —

“There can be no doubt that Lord Salisbury's idea was to conduct the Government of India to a very large extent by private correspondence between the Secretary of State and the Viceroy. He was disposed to neglect, and also, I think, to undervalue the value of the views of Anglo-Indian officials. This idea inevitably tended to bring the Viceroy into the same relation to the Secretary of State for India as that in which an Ambassador or Minister at a Foreign Court stands to the Secretary of State for Foreign Affairs... Lord Northbrook's general view was the exact opposite of all this, and I am strongly convinced that he was quite right ..... He recognized the subordinate position of the Viceroy, but he held that Parliament had conferred certain rights not only on the Viceroy, but on his Council which differentiated them in a very notable degree from subordinate officials such as those in the diplomatic service..... Lord Northbrook regarded the form of Government in India as a very wise combination which enabled both purely English and Anglo-Indian experience to be brought to bear on the treatment of Indian questions. He did not by any means always follow the Indian official view; but he held strongly, in the first place, that to put aside that view and not to accord to the two Councils in London and Calcutta their full rights was unconstitutional in this sense that, though the form might be preserved, the spirit of the Act of Parliament regulating the Government of India would be evaded. In the second place, he held that for a Viceroy or a Secretary of State without Indian experience to overrule those who possessed such experience was an extremely unwise proceeding, and savoured of an undue exercise of that autocratic power of which he himself was very unjustly accused.”

The self-same question of the relations between the Secretary of State and the Viceroy was mooted by the Rt. Hon. Mr. Montagu, then Under-Secretary of State for India, in one of his speeches introducing the Indian Budget. He said—“The relations of a Viceroy to the Secretary of State are intimate and responsible. The Act of Parliament says—‘The Secretary of State in Council shall superintend, direct, and control all acts, operations and concerns which in any way relate to or concern the government or revenues of India, and all grants of salaries, gratuities and allowances, and all other payments and charges whatever out of or on the revenues of India.’ It will be seen how wide, how far-reaching, and how

complete these powers are. Lord Morley and his Council, working through the *agency* of Lord Minto, have accomplished much etc.”

Sir Valentine Chirol, in his book on “*The Indian Unrest*,” points out that there are two great objections to the above *doctrine* of “*agency*”. In the first place it ignores one of the most important features of the Governor-General’s office—*viz.*, that he is the direct and personal representative of the King-Emperor, and in that capacity, at any rate, it would be improper to describe him as the “agent” of the Secretary of State. In the second place, it ignores equally another distinctive feature of his office, especially important in regard to his relations with the Secretary of State *viz.*, that, in his executive as well as in his legislative capacity, he is not a mere individual, but a corporate body—the Governor-General in Council.

Lord Morley in reviewing Sir Valentine Chirol’s book in the *Nineteenth Century and After* in an article headed “*British Democracy and India*” says —“He (Sir Valentine Chirol) tries at making out a case for limitation of the Indian Secretary’s power, authority and duties, so severe as to make such responsibility perilously shadowy and secondhand.” He then goes on to refute Sir Valentine Chirol’s “*Man on the spot theory*”.

“In 1858 Queen Victoria announced to the princes, Chiefs and people of India that she had taken upon herself the government of the territories in India heretofore administered in trust for her by the East India Company, and further—‘We reposing especial trust and confidence in the loyalty, ability, and judgment of our right trusty and well beloved cousin—constitute and appoint him to be our first Viceroy and Governor-General in and over our said territories and to administer the Government thereof in our name, and generally to act in our name and on our behalf *subject to such orders and regulations as he shall from time to time, receive through one of our Principal Secretaries of State.*’ The principle so definitely announced has been uniformly maintained. The Royal Warrant appointing the Governor-General always contains the provision thus set forth in the Mutiny Proclamation—‘Now know that we, reposing especial trust and confidence in the Fidelity, Prudence, Justice, and Circumspection of you the said Victor, Alexander, Earl of Elgin and Kincardine, have nominated, made, constituted and appointed you to be Governor-General of India.....to take upon you, hold and enjoy the said office.....during our Will and Pleasure, subject nevertheless to such instructions and directions as you.....shall, as Governor-General of

India in Council, from time to time receive under the hand of one of Our Principal Secretaries of State'. This language of the Mutiny Proclamation, and of the Warrants of Appointment settles the question so far as the Governor-General in Council is concerned

"The position of the Secretary of State under the statutes is quite as clear, though it takes a few more words to set it out. The law of 1858 calling the Indian Secretary into existence enacts that 'save as herein otherwise provided, one of Her Majesty's Principal Secretaries of State shall have and perform all such or like powers and duties in anywise relating to the government and revenues of India, and all such of the like powers over all officers appointed or continued under this Act as might or should have been exercised or performed by the East India Company, or by the Court of Directors or Court of Proprietors of the said Company.' This section continues to the Secretary of State all the powers of the Company, and the relations of the Company to their Governor-General were defined in the Regulating Act of 1772 'The said Governor-General and Council for the time being shall, and they are hereby directed and required to, obey all such orders as they shall receive from the Court of Directors of the said United Company' Then by the Act of 1784, Pitt called into existence the body of Commissioners who became known as the Board of Control. Their business as set forth eight years later, was 'to have and be vested with full power and authority to superintend, direct and control all acts, operations and concerns which in anywise relate to or concern the civil or military government or revenues of the said territories and acquisitions in the East Indies' All these powers and duties, formerly vested either in the Board of Control, or in the Company, the Directors, and the Secret Committee in respect of the government and revenues of India, were to be inherited by the Indian Secretary. In short, as it is plainly summed up in that magnificent enterprise, the *Imperial Gazetteer of India*, composed, I think, officially at Simla, the Secretary of State has the power of giving orders to every officer in India, including the Governor-General.

In view of the constitutional reforms initiated in 1909 by Lord Morley himself and in 1919 by his great disciple and successor, and the consequently increasing association of Indians in legislation and administration, there is not much force in Lord Morley's argument that the *Man on the spot theory* would lead "to the surprising result of placing what is technically called the Government of India in a position of absolute



inresponsibility to the governed." On the other hand Sir Valentine Chirol proved a true prophet when he said—"What we may and probably must look forward to at no distant date is that with the larger share in legislation and administration secured to Indians by such measures as the Indian Councils Act, the Government of India will speak with growing authority as the exponent of the best Indian opinion within the limits compatible with the maintenance of British rule, and that its voice will, therefore, ultimately carry scarcely less weight at home in the determination of Indian policy than the voice of our self-governing Dominions already carries in all questions concerning their internal development." The following remarks of the *London Times* (April 28, 1916) in its review of Lord Hardinge's Viceroyalty are also in the same strain:—"A great new principle lay behind that simple little speech delivered by Lord Hardinge at Madras (regarding the South African question). Whatever form the relations between Great Britain and India may eventually assume, it is reasonably certain that future Viceroys and future Governments of India must more and more identify themselves with Indian interests, even when they seem to conflict at times with the policy of the Home Government. They must be truly Indian Governments, which implies some change of spirit and outward attitude. It also implies a great lessening of Whitehall control."

## THE GOVERNOR-GENERAL.

The Governor-General. [1858, s. 29.] **34.** The Governor-General of India<sup>1</sup> is appointed by His Majesty by warrant under the Royal Sign Manual.<sup>2</sup>

### § 1. The Governor-General of India.

*Early history:* The grant of the *Diwani* in 1765 made Bengal the predominant presidency, and therefore the Regulating Act of 1773 converted its Governor in Council into a Governor-General in Council and gave him superintending authority over Bombay and Madras. For a long time indeed the mere isolation of the western and southern presidencies attenuated the authority of the Governor-General in Council over them. His control became effective only as the British dominions extended, till they became contiguous and communications between them improved. The Charter Act of 1833 vested the direction of the entire civil and

military administration and the sole power of legislation in the Governor-General in Council, now for the first time styled "of India" and defined more precisely the nature and extent of the control to be exercised over the subordinate governments.

*His position and powers*—The supreme authority in India is vested by statute in the Governor-General in Council, subject to the control of the Secretary of State. At the head of the Government is the Governor-General, who also, as the representative of the Crown, has been called, since 1858, the Viceroy. He is appointed by His Majesty the King-Emperor, on the advice of the Prime Minister, by warrant under the Royal Sign Manual and usually holds office for a term of five years. He gets a maximum annual salary of Rs. 256,000.

He is not subject to the original jurisdiction of any High Court by reason of anything counselled, ordered or done by him in his public capacity only; he is not liable to be arrested or imprisoned in any suit or proceeding in any High Court acting in the exercise of its original jurisdiction; nor is he subject to the original criminal jurisdiction of any High Court except on charges of treason or felony.

Like the Colonial Governors he has now the prerogative of pardon which is expressly conferred on him by his warrant of appointment. Thus in the Royal Warrant appointing His Excellency Lord Chelmsford to be Governor-General of India the Royal prerogative to grant a free or conditional pardon to any offender convicted by a court of justice in the exercise of its criminal jurisdiction has been delegated to the Governor-General. This delegation does not, however, empty the Crown of its prerogative in this respect. The prerogative still exists and may be exercised on occasions, but the Governor-General is now able to grant such a pardon on His Majesty's behalf should he think it right to do so.

If the Governor-General can command the support of the Secretary of State he can wield very great powers indeed. He has statutory powers of overruling his Executive Council and also of vetoing any statute passed by any legislature in India; he may even legislate on his own sole authority, subject to the limitation that laws so made by him do not continue in force for a longer period than six months. These powers are, of course, for use in emergencies; and, as a matter of fact, the Governor-General has only on very few occasions made laws on his own authority.

The Viceroy is under no positive obligation to summon his Executive Council for joint deliberation, and under some Governors-General consider-

able intervals have elapsed between Council meetings. The Governor-General's official correspondence with the Home Government is known to his Council, the members of which append their signatures to his despatches. But he is in regular communication with the Secretary of State by private letters and telegrams, and of this correspondence the Council may remain in entire ignorance.

*The statutory powers of the Governor-General—as distinguished from those of the Governor-General in Council—are as follow—*

1. The Governor-General in Council means the Governor-General in Executive Council. [Sec. 134 (1).]

2. The Governor-General is appointed by His Majesty by warrant under the Royal Sign Manual. [Sec. 34.]

3. He appoints a member of his Executive Council to be Vice-President thereof. [Sec. 38.]

4. He may make rules and orders for the more convenient transaction of business in his Executive Council. [Sec. 40 (2).]

5. He may overrule his Council and adopt, suspend or reject any measure if in his judgment such a course of action is necessary in the interests of the safety and tranquillity of British India. [Sec. 41 (2).]

6. He may alone exercise at his discretion all or any of the powers which might be exercised by the Governor-General in Council at meetings of the Council provided he is authorised by the Governor-General in Council so to do. [Sec. 43 (1).]

7. During absence of his Executive Council he may issue any orders to any Local Government or to any officer. [Sec. 43 (2).]

8. He may appoint from among the members of the Legislative Assembly Council Secretaries who shall hold office during his pleasure. [Sec. 43A.]

9. He is consulted by His Majesty before appointing the five Provincial Governors. [Sec. 46 (2).]

10. He may appoint a Deputy Governor to administer part of a Governor's Province. [Sec. 52A.]

11. He appoints Lieutenant-Governors with the approval of His Majesty.

12. He appoints members of Lieutenant-Governors' Executive Councils with the approval of His Majesty. [Sec. 55 (3).]

13. He and two chambers constitute the Indian Legislature. [Sec. 63.]

14. He has power to appoint, from among the members of Council of State, a President and other persons to preside in such circumstances as he may direct. [Sec. 63A (2).]

15. He has the right of addressing the Council of State and the Legislative Assembly and may for that purpose require the attendance of members of either of them, as the case may be. [Sec. 63A (3), 63B (3).]

16. He has the power to appoint the President of the Legislative Assembly during the first four years and his approval is necessary for future elected Presidents. [63 C (1).]

17. His approval is also necessary for the elected Deputy President of the Legislative Assembly. [Sec. 63 C. (2).]

18. He may remove the appointed President from his post. [Sec 63 C. (3).]

19. His concurrence is necessary for removing the elected President and the Deputy President from office by a vote of the Assembly. [Sec. 63 C. (4).]

20. He is to determine the salary of the appointed President. [Sec. 63 C. (5).]

21. He may dissolve either Chamber of the Indian Legislature before the expiry of their term. [Sec. 63 D (a).]

22. He may extend the term of either Chamber if in special circumstances he thinks fit so to do. [Sec. 63D. (b).]

23. After the dissolution of either Chamber he appoints a date, not more than six months, or with the sanction of the Secretary of State, not more than 9 months after the date of dissolution, for the next session of that Chamber.

24. He may appoint such times and places for holding the sessions of either Chamber of the Indian Legislature as he thinks fit. [Sec. 63D. (2).]

25. He may from time to time, by notification or otherwise, prorogue the sessions of either Chamber of the Indian Legislature. [Sec. 63 D. (2).]

26. His previous sanction is necessary for introducing certain measures specified in Sec. 67 (2) at any meeting of either Chamber of Indian Legislature. [Sec. 67 (2).]

27. He may certify, under certain circumstances, that a bill or any clause of it or any amendment, affects the safety or tranquillity of British India or any part thereof, and may direct that no further proceedings shall be taken by the Chamber in relation to that bill. [Sec. 67 (2A).]

28. He may, in his discretion, refer any contested matter for decision to a joint sitting of both Chambers of the Indian Legislature. [Sec. 67 (3).]

29. He may, when a bill has been passed by both Chambers of the Indian Legislature, return the bill for reconsideration by either Chamber. [Sec. 67 (4).]

30. The first standing orders of the Indian Legislature, may, with his consent be altered by the Chamber to which they relate [Sec. 67 (6).]

31. It is only on his recommendation that a proposal for the appropriation of any revenue or moneys for any purpose can be made. [Sec. 67A. (2).]

32. If any question arises whether a proposed appropriation of revenue or moneys does or does not relate to the heads specified in Sec. 67A (3), his decision is final. [Sec. 67 (A) (4).]

33. Notwithstanding anything in sec. 67A he has power in cases of emergency to authorize such expenditure, as may, in his opinion be necessary for the safety or tranquillity of British India or any part thereof. [Sec. 67A (8).]

34. Where either Chamber of the Indian Legislature fails to pass essential legislation he may certify that the passage of the bill is essential for the safety, tranquillity or interest of British India or any part thereof; and thereupon the bill becomes an Act on his signature [Sec. 67B (1).]

35. When a bill has been passed by the both Chambers of the Indian Legislature it cannot become an Act until he has declared his assent thereto. [Sec 68 (2).]

36. He has to send to the Secretary of State in Council an authentic copy of every regulation to which he has assented under sec. 71 (2). [Sec. 71 (3).]

37. He may in cases of emergency make and promulgate ordinances for the peace and good government of British India or any part thereof. (Sec. 72).

38. His previous sanction is necessary, if the Local Legislature of any Province make or take into consideration any law relating to subjects specified in sub-sec. 3 of Sec 80A. (Sec. 80A).

39. He may invalidate an act of any Local Legislature by withholding his assent from it even though the Governor had signified his assent to it. (Sec. 81).

40. He may instead of assenting to or withholding his assent from any Act passed by Local Legislatures, declare that he reserves the Act for the signification of His Majesty's pleasure thereon. [Sec. 81A (3).]

41. Where a bill passed by a Local Legislative Council is reserved for his consideration, his consent is necessary for returning the bill for further consideration, by the Council with a recommendation that the Council shall consider amendments thereto. [Sec. 81A 2 (a).]

42. He may, instead of assenting to or vetoing any Act passed by a Local Legislature, declare that he reserves the Act for the signification of His Majesty's pleasure thereon. [Sec. 81A (3).]

43. There shall be paid to him out of the revenues of India an annual salary not exceeding 256,000 rupees. [Sec. 85 (1).]

44. If the Governor-General, except on special duty or on leave under a medical certificate, departs from India, intending to return to Europe, his office shall thereupon become vacant. [Sec. 87 (1).]

45. He is not—(a) subject to the original jurisdiction of any High Court by reason of anything counselled, ordered or done, by him in his public capacity only nor (b) liable to be arrested or imprisoned in any suit or proceeding in any High Court acting in the exercise of its original jurisdiction nor (c) subject to the original criminal jurisdiction of any High Court in respect of any offence not being treason or felony.

46. If he is concerned in, or has any dealings or transactions by way of trade or business, for the benefit either of himself or of any other person, otherwise than as a shareholder in any Joint Stock Company or trading corporation, he is guilty of a misdemeanour. [Sec. 124 (4).]

## § 2 "The Royal Sign Manual."

This means "the Royal Signature, sometimes required by the statute as evidence of the authority of the Sovereign. Towards the end of the reign of King George IV, the Royal Signature was, in consequence of the King's illness, by 11 George IV. and 1 William IV. c. 23, authorized to be affixed for him by Commision."—*Wharton*.

## THE GOVERNOR-GENERAL'S EXECUTIVE COUNCIL.

[35]. *This section, describing the Governor-General's executive council as consisting of ordinary and extraordinary members, has been repealed by the Government of India Act, 1919.*

**36.** (1) The members of the Governor-General's executive council<sup>1</sup> shall be appointed by His Majesty by warrant under the Royal Sign Manual.

Members of council.  
[1861, c. 67, s. 3; 1869,  
c. 97, s. 8; 1874, c. 91,  
s. 1.]

(2) The number of the members of the council<sup>2</sup> shall be "such as His Majesty thinks fit to appoint."

[1861, c. 67, s. 3;  
1874, c. 91, s. 1.]

(3) Three at least of them must be persons who have been for at least ten years in the service of the Crown in India,<sup>3</sup> and one must be a barrister of England or Ireland, or a member of the Faculty of Advocates of Scotland, "or a pleader of a High Court" of not less than "ten" years' standing.

(4) If any "member of the council (other than the Commander-in-chief for the time being of His Majesty's forces in India)" is at the time of his appointment in the military service of the Crown, he shall not, during his continuance in office as such member, hold any military command or be employed in actual military duties.

(5) "Provision may be made by rules under this Act as to the qualifications to be required in respect of the members of the Governor-General's executive council in any case where such provision is not made by the foregoing provisions of this section."

[1919, s. 28 (3)]

## § 1 "The Governor-General's Executive Council."

The Governor-General has generally no power to act otherwise than in Council (where he is ordinarily bound by the decision of the majority). All official acts of the central Indian Government run in the name of this corporate body which is commonly and properly described as the "Government of India." In the Governor-General in Council is vested "the superintendence, direction, and control of the whole civil and military government" of British India.

*The Constitution of the Council.*—The Governor-General's Executive Council consists of such number of members as His Majesty thinks fit to appoint. There are now six members of Council who are all appointed by His Majesty under the Royal Sign Manual. Three of the members must be persons who have been for at least ten years in the service of the Crown in India—it should be noted that the Act does not lay down that they must belong to the Indian Civil Service; one must be a barrister of England or Ireland, or a member of the faculty of Advocates of Scotland, or a pleader of a High Court of not less than ten years' standing. None of the members of the Council can be a military officer. If, at the time of his appointment, a member is a military officer, he must resign his command. He cannot be employed in military duties during the tenure of his office as member of the Viceregal Council. The qualifications of only four of the members are thus laid down by law, so that there is a discretion in the appointment of the rest.

Besides these six members the Secretary of State in Council invariably exercises his discretionary power to appoint the Commander-in-Chief in India to be a member of the Governor-General's Executive Council. The former limitation as to the number of the members of the Governor-General's Executive Council has now been removed.

The presence of Indian gentlemen in the Viceroy's Council is not secured by any legal provision; on the other hand Indians are not by law debarred from holding these offices (*cf.* Sec. 96 of this Act which runs thus:—"No native of India, nor any subject of His Majesty resident therein, shall, by reason only of his religion, place of birth, descent, colour, or any of them, be disabled from holding any office under the Crown in India"). As Lord Morley said in one of his speeches on the India Councils Bill—"The absence of an Indian member from the Viceroy's Executive Council can no longer, I think, be defended. There



is no legal obstacle or statutory exclusion. The Secretary of State can to-morrow, if he likes, if there is a vacancy on the Viceroy's Council, recommend His Majesty to appoint an Indian member." Lord Morley did not hesitate to give effect to his liberal intention, and he forthwith appointed Mr. S. P. (now H. E. Lord) Sinha in March 1909, to the post of Law Member of the Governor-General's Council. It should be noted in this connection that there is no statutory provision to prevent the majority or even the entirety of the Executive Councils of the Governor-General, Governors or Lieutenant-Governors from being composed of Indians, provided of course they fulfil the statutory requirements regarding services etc. and, as a matter of fact, we now have three Indians on the Governor-General's Executive Council.

The six ordinary members of Council hold charge, respectively, of the Departments of:—(1) Home Affairs; (2) Revenue and Agriculture, and Public Works; (3) Commerce and Industry, and Railways; (4) Education; (5) Finance and (6) Law.

(1) The Home Department controls the general administration of British India and deals with internal politics, law and justice, jails, police, and a number of other subjects.

(2) The Department of Revenue and Agriculture deals very largely with questions concerning land; it supervises the collection of the land revenue; it sees that the assessments are made on the best and most equitable basis. Another important duty is to supervise the arrangements made by the Local Governments for famine relief, and also to encourage the development of scientific agriculture. The Department of Public Works deals with irrigation works, roads and public buildings.

(3) The Department of Commerce and Industry was created by Lord Curzon. The supervision of all industrial projects in India, the collection and distribution of commercial intelligence, the management of the post office and telegraphs, customs, ports and merchant shipping, mining and factories are all committed to the charge of this Department. It is also expected to regulate the trade of the country and to interfere, when necessary, in the interests of health and humanity. Preliminary to the organization of an Imperial Department of Industries—in accordance with the recommendations of the Indian Industrial Commission—a Board of Industries and Munitions has been set up as an interim authority since last year: this Board has taken over from the Commerce and Industries

Department certain items of work, has undertaken the initial work of organization and are framing detailed proposals for the new permanent department. The Board is under the direct charge of the Viceroy, the President of the Board taking part in Council meetings when industrial questions are discussed, but with no power of voting. The creation of a separate Membership of Industries is imminent.

(4) The Department of Education was created in 1910. It deals mainly with education, hospitals, public health, municipalities and local boards and ecclesiastical matters. As all these matters fall within the jurisdiction of the various provincial governments, the work of the Department is chiefly of a supervising and controlling nature; it has also to formulate the policy of the Government of India regarding Education, Sanitation and Local Self-Government.

(5) The Finance Member has powers of supervision over all matters of finance and examines all matters placed before the Council from the financial point of view. He deals with questions relating to the salaries, leave, and pensions of public officers; and with currency and banking. His Department supervises and controls some of the sources of "separate revenue"—e.g., opium, stamps, and assessed taxes, though the local management of these is in the hands of the subordinate Governments—and it directly administers the Mint and Assay Departments. The necessary supervision over the financial affairs of the provincial and local authorities is maintained by the provincial Accountant-General and his officers who are responsible to the Comptroller and Auditor-General.

It may be interesting in this connexion to compare the position and functions of the Indian Finance Member with those of the English Chancellor of the Exchequer.\* In the United Kingdom the Chancellor of the Exchequer is the responsible and active chief of the revenue

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\* "Theoretically the position of the Finance Member of Council is, except in a few details, very much the same as that of the Chancellor of the Exchequer in England, but there can be no doubt, I think, that the Financial Department in India does not occupy the same predominant position in India that the Treasury does in England, because of the fact that the Chancellor of the Exchequer is responsible to Parliament and has to defend any measure he may bring forward before a body of men, of whom a considerable number are there purposely with the object of opposition; and also because of the Prime Minister being usually the head of the treasury, and a leader of Parliamentary opinion being almost always chosen for the post of the Chancellor of the Exchequer."—*Lord Cromer's evidence before the Welby Commission (August 4, 1896).*

administration. The two great revenue boards, which manage and control the collection of taxes throughout the Kingdom, sit in London and their Chairmen are in constant communication with him. He answers in Parliament for their acts, and appeal from their decision lies to him, as wielding the powers of the Board of Treasury. The Post Office, including the Telegraph Department, the Woods and Forests, the Mint, and other minor revenue offices, are also subject to him financially. The returns furnished to him weekly, monthly and quarterly, enable him to follow closely fluctuations in receipts and he has at hand the heads of the revenue offices to assist him in ascertaining the causes of fluctuation and in forecasting the progress of his receipts. Further, he has, in intercourse with the chief expert officers, ample opportunity for learning defects in revenue laws or in the administration of the revenue department. Thus he is not only invested with the authority of Chief Officer of the Revenue, but he has the means of exercising that authority directly and effectively, and the personal impress which Chancellors of the Exchequer have left on the financial administration of the past has enabled holders of the office to discharge effectively the powers entrusted to them. The Chancellor of the Exchequer works the financial machine himself.

The revenue system of India is organized upon a different principle. Owing to the vast extent of territory, and the necessary partition of the country into separately organized provinces, the Finance Minister has not, to the same degree as the Chancellor of the Exchequer, direct control over the departments entrusted with the collection and management of the revenues. For the same reason, his sources of information are not as easily or as immediately accessible. The larger area over which his operations extend makes it impossible for him to learn details by correspondence, by summoning officers from distant centres, or by visiting them himself as speedily as is possible within the narrower limits of the United Kingdom. But although centralisation in finance suits a comparatively small and homogeneous state, decentralisation is more convenient for an immense territory, and for races varying in religion, in language, and in degrees of civilisation. Sir David Barbour said, in illustration of this point, that Europe could not be governed in detail from one capital; and Lord Cromer contended that it was impossible for one central authority to enforce economy on a continent such as India.

(6) The member of Council who is required to be a Barrister or a Pleader of not less than ten years' standing is usually styled the Law

Member. The first holder of the post was Lord Macaulay. The functions of the Department presided over by him are to prepare the drafts of all legislative measures introduced into the Indian Legislature to consider, and in some cases to determine, the form of regulations submitted under sec. 71 of the Government of India Act and of the rules and regulations made under powers given by Acts of the Indian Legislature to consider Bills and Acts of the local legislatures with reference to penal clauses and other special points, and to advise other departments of the Government on various legal questions. The Law Member of the Council is an *ex officio* member of the Select Committees to which Bills are referred.

Railway administration is committed to a Railway Board, which is a separate department of the Government of India under the Member for Commerce and Industry. Foreign affairs *i.e.*, matters concerning the Native States and external politics are retained by the Viceroy himself—he is his own Foreign Minister; but he is assisted by two Secretaries—the Political Secretary dealing with all questions concerning Native States, and the Foreign Secretary confining himself to purely foreign affairs. Military affairs are dealt with by the Commander-in Chief who is thus his own War Minister.

## § 2. "The number of the members of the Council"

"The changed relations of the Governor-General in Council," observe the authors of the Montagu-Chelmsford Report, "will in themselves materially affect the volume of work coming before the department, and for this reason alone some redistribution will be necessary. We would therefore abolish such statutory restrictions as now exist in respect of the appointment of Members of the Governor-General's Council, so as to give greater elasticity both in respect of the size of the Government and the distribution of work. If it is desired to retain Parliamentary control over these matters, they might be embodied in statutory orders to be laid before Parliament." (*M. C. R., para. 271.*)

"The recommendation of the Committee is that the present limitation on the number of the members of the Governor-General's Executive Council should be removed, that three members of that Council should continue to be public servants or ex-public servants who have had not less than ten years' experience in the service of the Crown in India; that

one member of the Council should have definite legal qualifications, but that those qualifications may be gained in India as well as in the United Kingdom ; and that not less than three members of the Council should be Indians. In this connection it must be borne in mind that the members of the Council drawn from the ranks of the public servants will, as time goes on, be more and more likely to be of Indian rather than of European extraction.”—*J. S. C. R.*

One of these recommendations of the Joint Select Committee has found statutory recognition in this section (Sec. 36) ; and, in accordance with its recommendation three Indians—Hon’ble Mr. Sarna, Hon’ble Mr. Shafi, and Hon’ble Dr. Sapru—have already been appointed to be Members of the Governor-General’s Executive Council.

The removal of the restriction as to the number of members of the Governor-General’s Executive Council will enable the Council to expand in size concurrently with the expansion of the volume of work. As we have seen above, the creation of a new Membership of Industries is imminent.

### § 3. “Ten years in the service of the Crown in India.”

It should be noted that the Act does not lay down that three persons must belong to the Indian Civil Service : they may be recruited from any of the Civil Services of the Crown in India (referred to in sec. 96 B of this Act). It should also be noted that the three persons are to have been for at least ten years in the service of the Crown, not in *British India*, but in *India*.

In the principal Act of 1915 the words were—“Three at least of them must be persons who *at the time of their appointment* have been for at least ten years in the service of the Crown in India.” Those italicised words implied that they had put in at least ten years’ *continuous* service under the Crown and who, *at the time of appointment* as Member of the Governor-General’s Executive Council, were *still in service*. The deletion of the italicised words implies (1) that at least ten years’ service under the Crown is a necessary qualification though it may be a continuous period or it may be made up of broken periods of service ; and (2) that pensioned or retired civil officers who have put in at least ten years’ service under the Crown in India are eligible for appointment as members of the Governor-General’s Executive Council.

**37.** “If the Commander-in-chief for the time being of His Majesty’s forces in India is a member of the Governor-General’s executive council he shall, subject to the provisions of this Act, have rank and precedence in the Council next after the Governor-General.”

Rank and precedence  
of Commander-in-Chief.  
[1919, s. 28 (4).]

**38.** The Governor-General shall appoint a member of his executive council to be vice-president thereof.

Vice-President of  
council. [1909, s. 4.]

**39.** (1) The Governor-General’s executive council shall assemble at such places in India as the Governor-General in Council appoints.

Meetings. [1861, c.  
67, s. 9.]

(2) At any meeting of the council the Governor-General or other person presiding and one member of the council “(other than the Commander-in-chief)” may exercise all the functions of the Governor-General in Council.<sup>1</sup>

[1833, s. 48. 1919 2nd.  
s.ch., pt. II.]

### § 1. “Functions of the Governor-General in Council.”

The Council usually meets once a week, but special meetings may be called at any time at such places (generally Simla and Delhi) as the Governor-General in Council may fix. The meetings are private, and the procedure is of the same informal kind as at a meeting of the pre-war English Cabinet, the chief difference being that one of the Secretaries to the Government usually attends during the discussion of any question affecting his department and takes a note of the orders passed. [This small analogy must not be taken to mean that this form of Council Government is Cabinet Government, for the latter as we have seen, implies Government by a body of people constitutionally responsible to the legislature—a thing which is absent in the case of the Governor-General’s Executive

Council.] In theory, members of Council have no power to act otherwise than in Council or by the implied authority of the Governor-General in Council. In practice under the rules for the disposal of business, a member passes orders, without bringing the matter before the Council, in minor cases. All important matters, and specially cases where two Departments differ in opinion, or a Local Government is overruled, are referred to the Governor-General, and orders are passed either by him or by the whole Council. Questions involving large issues of general policy are always settled in Council. If there is a difference of opinion, the vote of the majority prevails, subject to the power of the Governor-General to overrule the Council in exceptional cases. If the votes are equally divided, the Governor-General, or in his absence the senior member present, has a casting vote.

The Report of the Royal Commission on Decentralisation in India gives the following authoritative description of the manner in which the business of the Government of India is transacted :—

“In regard to his own department, each Member of Council is largely in the position of a Minister of State, and has the final voice in ordinary departmental matters. But any question of special importance and any matter in which it is proposed to overrule the views of a local Government, must ordinarily be referred to the Viceroy. This latter proviso acts as a safeguard against undue interference with the Local Governments ; but it necessarily throws a large amount of work on the Viceroy. In the year, 1907-08, no less than 21.7 per cent of the cases which arose in, or came up to, the Home Department required submission to the Viceroy. The Home Department is, however, concerned with questions which are, in a special degree, subject to review by the Head of the Government, and we believe that in other departments the percentage of cases referred to the Viceroy is considerably less. Any matter originating in one department which also affects another must be referred to the latter and in the event of the departments not being able to agree, the case would have to be referred to the Viceroy.

“The Members of Council meet periodically as a Cabinet—ordinarily once a week—to discuss questions which the Viceroy desires to put before them, or which a Member who has been overruled by the Viceroy has asked to be referred in Council. The Secretary in the department primarily concerned with a Council-case attends the Council for the purpose of furnishing any information which may be required of him. If there is

a difference of opinion in the Council, the decision of the majority ordinarily prevails, but the Viceroy can overrule a majority if he considers that the matter is of such grave importance as to justify such a step.

"Each departmental office is in the subordinate charge of a Secretary whose position corresponds very much to that of a permanent Under-Secretary of State in the United Kingdom, but with these differences, that the Secretary as above stated, is present at Council meetings, that he attends on the Viceroy, usually once a week, and discusses with him all matters of importance arising in his department: that he has the right of bringing to the Viceroy's special notice any case in which he considers that His Excellency's concurrence should be obtained to action proposed by the departmental Member of Council: and that his tenure of office is usually limited to three years.

It is sometimes thought that the Government of India is synonymous with Government by the Viceroy who is its responsible head. The error in this view has been thus exposed by Lord Curzon who, in one of his farewell speeches in India, said—"Never let it be forgotten that the Government of India is conducted not by an individual but by a committee. No important act is taken without the assent of a majority of that committee. In practice this cuts both ways. It is the tendency in India as elsewhere, but much more in India than anywhere else that I have known, to identify the acts of Government with the head of the administration. The Viceroy is constantly spoken of as though he and he alone were the Government. This is, of course, unjust to his colleagues, who are equally responsible with himself, and very often deserve the credit which he unfairly obtains. On the other hand, it is sometimes unfair to him; for he may have to bear the entire responsibility for administrative acts or policies which were participated in and perhaps originated by them. \* \* \* The Viceroy has no more weight in his Council than any individual Member of it."\*

There is much truth in Lord Curzon's view of the powers and position of the Viceroy in his relations with his Council. Though the Governor-General has the power to dispense with his Council, it is not always easy to exercise it. As the Mesopotamia Commission's Report says.—"In India the power of the Governor-General to dispense with his

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\* Lord Curzon's Indian Speeches, Vol. II. p. 299.



Council is much more circumscribed. The Government of India is throughout the Statute invariably designated as the Governor-General in Council. If the Governor-General is away from his Council on tour he has all the powers which he could exercise if he was with his Council, and, moreover, he has the power, when with the Council, of over-ruling them on certain questions, if the majority of them differ from him. But the Members of the Secretary of State's Council and of the Governor-General's Council have a Statutory right of protesting in writing against any action of which they disapprove. The protest must be in accordance with their expressed objections in Council, and such written protest can be called for and laid before Parliament. The intention of Parliament in setting up the Government of India upon this basis seems to have been a wish to associate the Secretary of State and the Governor-General (who under the conditions existing in this country would probably be politicians) with Councils of trained Indian administrators; and the power of protest was doubtless given so that each Council might be a check upon the Secretary of State, or the Governor-General, against taking impulsive, or in the view of the Council, improper action."

**40.** (1) All orders and other proceedings of the Governor-General in Council shall be expressed to be made by the Governor-General in Council, and shall be signed by a Secretary<sup>1</sup> to the Government of India, or otherwise, as the Governor-General in Council may direct "and when so signed shall not be called into question in any legal proceeding on the ground that they were not duly made by the Governor-General in Council."

Business of Governor-General in Council.  
[1793, s. 39; 1813, s. 79; 1919, 2nd Sch. Pt. II.]

(2) The Governor-General may make rules and orders for the more convenient transaction of business, in his executive council, and every order made, or act done, in

[1861, c. 67, s. 8.]

accordance with such rules and orders shall be treated as being the order or the act of the Governor-General in Council.

§ 1. "Signed by a Secretary".

In practice, the orders and proceedings of the Governor-General in Council are signed by the Secretary of the department to which they relate.

§ 2. "Rules and Orders...of business".

The rules and orders made under this section appear to be treated by the Government of India as confidential, and have not been published. The most important effect of this section has been to facilitate the departmental transaction of business.—*Ilbert*.

41. (1) If any difference of opinion arises on any question brought before a meeting of the Governor-General's Executive Council, the Governor-General in Council shall be bound by the opinion and decision of the majority of those present, and, if they are equally divided, the Governor-General or other person presiding shall have a second or casting vote<sup>1</sup>.

Procedure in case of  
difference of opinion.  
[1772, s. 8; 1833, s.  
48]

(2) Provided that whenever any measure is proposed before the Governor-General in Council whereby the safety, tranquillity or interests of British India, or of any part thereof, are or may be, in the judgment of the Governor-General, essentially affected, and he is of opinion either that the measure proposed ought to be adopted and carried into execution, or that it ought to be suspended or rejected, and the majority present at a meeting of the council dissent from that opinion,

[1870, c. 3, s. 5.]

the Governor-General may, on his own authority and responsibility, adopt, suspend or reject the measure, in whole or in part<sup>2</sup>.

(3) In every such case any two members of the dissentient majority may require that the adoption, suspension or rejection of the measure, and the fact of their dissent, be reported to the Secretary of State, and the report shall be accompanied by copies of any minutes which the members of the council have recorded on the subject.

(4) Nothing in this section shall empower the Governor-General to do anything which he could not lawfully have done with the concurrence of his council.

[1793, s. 49.]

### § 1. "Second or casting Vote."

This means the "vote given by the Chairman or President of a deliberative assembly (who though not disqualified by law from voting, —see *Nell v. s. Longbottom* (1894) 1. Q. B. 767, 63 L. J. Q. B. 490—is usually not entitled to vote in the first instance), when the suffrages of the meeting are equal. The Speaker of the House of Commons (though he has no vote in the first instance) has a casting vote, and by the practice of the House gives it in favour of a motion or bill, so as to give opportunity for further consideration."—*Wharton*.

### § 2. "Governor-General...part"

Sub-section (2) of this section is based on sec. 8 of the Regulating Act of 1773 and sec. 48 of the Charter Act of 1833. But the mere exercise of the casting vote did not save Warren Hastings from the constant difficulty of facing a hostile majority in his Council; his successor, Lord Cornwallis accordingly, stipulated, on his appointment, that his powers should be enlarged. Accordingly an Act was passed in 1786 which empowered the Governor-General in special cases to override the majority of his council and act on his own responsibility. These exceptional powers given to the Governor-General by the Act of 1786 were reproduced in the Act of 1793

by sections which were superseded by those of a later enactment of 1870 which are here reproduced in sub-section (2) and (3).

**42.** If the Governor-General is obliged to absent himself from any meeting of the council, by indisposition or any other cause, the vice-president, or, if he is absent, the senior member "other than the Commander-in-Chief" present at the meeting, shall preside thereat, with the like powers as the Governor-General would have had if present:

Provision for absence of Governor-General from meetings of council. [1861, c. 67, s. 7; 1909, s. 4; 1919, 2nd Sch, Pt. II-III.]

Provided that if the Governor-General is at the time resident at the place where the meeting is assembled, and is not prevented by indisposition from signing any Act of council made at the meeting, the Act shall require his signature; but, if he declines or refuses to sign it, the like provisions shall have effect as in cases where the Governor-General, when present, dissents from the majority at a meeting of the council.

**43.** (1) Whenever the Governor-General in Council declares that it is expedient that the Governor-General should visit any part of India unaccompanied by his executive council, the Governor-General in Council may, by order, authorize the Governor-General alone to exercise, in his discretion, all or any of the powers which might be exercised by the Governor-General in Council at meetings of the council.

Powers of Governor-General in absence from council.

(2) The Governor-General during absence from his executive council may, if he  
[1793, s. 54 ; 1912, s. (1).] thinks it necessary, issue, on his own authority and responsibility, any order, which might have been issued by the Governor-General in Council, to any local Government, or to any officers or servants of the Crown acting under the authority of any local Government without previously communicating the order to the local Government; and any such order shall have the same force as if made by the Governor-General in Council; but a copy of the order shall be sent forthwith to the Secretary of State and to the local Government, with the reasons for making the order.

(3) The Secretary of State in Council may, by  
[1793, s. 55] order, suspend until further order all or any of the powers of the Governor-General under the last foregoing sub-section; and those powers shall accordingly be suspended as from the time of the receipt by the Governor-General of the order of the Secretary of State in Council.

**43A.** (1) "The Governor-General may at his discretion appoint, from among the  
Appointment of council secretaries.  
 [1919, s. 29.] members of the Legislative Assembly<sup>1</sup>, council secretaries<sup>2</sup> who shall hold office during his pleasure<sup>3</sup> and discharge such duties in assisting the members of his executive council as he may assign to them.

(2) "There shall be paid to council secretaries so

appointed such salary as may be provided by the Indian Legislature.<sup>4</sup>

(3) "A council secretary shall cease to hold office if he ceases for more than six months to be a member of the Legislative Assembly."

### § 1 "Legislative Assembly."

*See Notes under sec 63*

### § 2 "Council secretaries."

The provision for the appointment of council secretaries was inserted by the Joint Select Committee to allow of the selection of members of the legislature who will be able to undertake duties similar to those of the Parliamentary Under-Secretaries in England [*Vide notes under sec. 2 (3).*] "It should be entirely at the discretion of the Governor-General to say to which departments these officers should be attached, and to define the scope of their duties."

This provision goes further than the proposals made in para. 224 of the Montagu-Chelmsford Report which recommends the appointment of such council secretaries for the Provincial Legislatures.

"The suggestion has been made to us that in some provinces it might be convenient, where the press of work is heavy, to appoint some members of the legislative council, not necessarily elected, to positions analogous to that of a Parliamentary Under-Secretary in Great Britain, for the purpose of assisting the members of the executive in their departmental duties and of representing them in the legislative council. We feel no doubt that the elaboration of the machinery which is inevitable in future will impose greater burdens on the members of the Government. We suggest therefore that it may be advisable and convenient to take power to make such appointments."—*M. C. R. para. 224.*

The Government of India in their First Despatch on the Montagu-Chelmsford Report, accept the suggestion that members of the provincial legislative councils should be appointed to positions analogous to those of Parliamentary Under-Secretaries. But they think that "appointments of this nature are neither necessary nor desirable at the present stage in the Government of India." They feel that "it would be inadvisable to complicate the working of the Government of India in the difficult

times before us by an arrangement which cannot be justified on strong grounds, and which might be misconstrued as an attempt to introduce by a side issue the ministerial system into the Government of India." The Joint Select Committee, however, do not seem to have been impressed by these arguments they have, accordingly, inserted this section regarding the appointment of council secretaries from among the members, elected or nominated, of the Indian Legislative Assembly

### § 3 "During his pleasure."

*See notes under sec 102 (1)*

### § 4 "Salary provided by the Indian Legislature."

If the salary of council secretaries are voted by the Indian Legislature, they must apparently be responsible to it. for it is within the power of the Legislature to mark its disapproval of their policy or conduct by voting a reduction of their salary

## WAR AND TREATIES.

### 44. (1) The Governor-General in Council may

Restriction on power of Governor-General in Council to make war or treaty.

[1793, s. 42.]

not, without the express order of the Secretary of State in Council, in any case (except where hostilities have been actually commenced, or preparations for the commencement of hostilities have been actually made against the British Government in India or against any prince or state dependent thereon<sup>1</sup>, or against any prince or state whose territories His Majesty is bound by any subsisting treaty to defend or guarantee), either declare war or \* commence hostilities<sup>2</sup> or enter into any treaty for making war against any prince or state in India, or enter into any treaty for guaranteeing the possessions of any such prince or state.

(2) In any such excepted case the Governor-

General in Council may not declare war, or commence hostilities, or enter into any treaty for making war, against any other prince or state than such as is actually committing hostilities or making preparations as aforesaid, and may not make any treaty for guaranteeing the possessions of any prince or state except on the consideration of that prince or state actually engaging to assist His Majesty against such hostilities commenced or preparations made as aforesaid.

(3) When the Governor-General in Council commences any hostilities or makes any treaty, he shall forthwith communicate the same, with the reasons therefor, to the Secretary of State.

**§ 1. "Prince or State dependent thereon."**

All the Indian Native States are guaranteed protection by the Crown : as the price for this protection and for the rights which they derive therefrom, they have certain obligations to the British Government. These duties are liable to be reinforced by the exercise of the royal prerogative, by the action of Parliament within the limits which its solemn guarantees impose upon itself, by the law of natural justice, by fresh agreements, and by usage which is ever active to adapt the letter of engagements to their spirit under altered circumstances. Under such circumstances an exact balance of rights and obligations cannot be struck. Nevertheless, the main heads of the account are sufficiently distinct.

(1) The States have entrusted to the Paramount Power the duty of providing for common defence, and of directing their external relations.

(2) In time of war they must co-operate to the full extent of their resources, and in time of peace they must grant to the Imperial Army such assistance as it requires, and must regulate the strength and equipment of their own forces so as to avoid embarrassment to their neighbours and danger to the peace of their own territories.



(3) They must enable the supreme Government to maintain its communication between the military stations and posts occupied by its forces and to avoid dangerous interruptions or break of jurisdictional gauge in the Imperial system of Railways and Telegraphs.

(4) Inasmuch as the Government of India acts for them in all international and interstatal arrangements, they must loyally carry out the obligations incurred by the Supreme Government to foreign powers or other States on their behalf.

(5) The perpetuation of their governments is incompatible with the dismemberment of their States, internal disorder, or gross misrule. They must, therefore, accept Imperial intervention to prevent or correct such abuses. The laws of natural justice and the principle of religious toleration must be observed.

(6) The right of self-preservation, with its incidental rights, gives to the British Government an undefinable right to protect Imperial interests where they may be injured by the unfriendly action of the King's allies. and it suggests a possible right of intervention in their internal affairs, as in the regulation of currency, or commerce, or in the establishment of postal unions. Each case of interference must, however, be justified by real necessity.

(7) Claiming as they do the protection of the King-Emperor the Indian Princes must seek the confirmation of the Viceroy to their successions, must treat with respect the representatives of the Imperial authority, accept the guidance of the Supreme Government during minorities, and generally prove their loyalty to the Crown.

Such are the extensive duties of the protected princes: but there are strict limitations upon the interference of the British Government. Parliament and the Legislatures of India have on their part recognised the fact that except in the case of British subjects or servants, British legislative and judicial authority cannot extend beyond the territorial limits of India under the King-Emperor. The judicial or legislative functions with which the British Government is invested in regard to the Native States must, therefore, be based on a full recognition of the fact that they are exercised in a foreign territory.

If International law deals only with nations or States whose intercourse with one another is based upon the theory that they are equal powers and have the right to form alliances and declare war,

and conclude peace, the Native States of India cannot claim an International position. The above-mentioned restrictions placed upon their independent action, and the obligations which habitually govern their external relations, and even to some extent their exercise of internal sovereignty, must be held to have deprived them of real International status. This view is confirmed alike by the action and explicit declaration of the British Government and by the opinions of eminent writers on International Law.

The action and declaration of the British Government as to its relations with the Native States will be evident on an examination of the Manipur Case, the importance of which lies in the principles which were enunciated and approved by the highest authority. These principles were—(1) the assertion of the right of the Government of India to settle successions and to intervene in case of rebellion against a chief; (2) the doctrine that resistance to Imperial orders constitutes rebellion; (3) the right of the Paramount Power to inflict capital punishment on those who had put to death its agents whilst discharging the lawful duty imposed upon them. But the most important principle—that of the repudiation by the Government of India of the application of International law to the protected States—was thus formulated in the *India Gazette* of August 21, 1891—"The principles of International Law have no bearing upon the relations between the Government of India as representing the Queen-Empress on the one hand, and the Native States under the suzerainty of Her Majesty. The paramount supremacy of the former presupposes and implies the subordination of the latter."

The testimony of writers of acknowledged authority is hardly less emphatic. According to Twiss the States are "protected dependent States." Sir Edward Creasy in his *First Platform of International Law* deals with the proposition "that titular independence is no sovereignty if coupled with actual subjection." "Such," he observes, "is the condition of the Native Princes of India. We all see clearly in them and in their subjects not independent political communities, which are sovereign States in the eye of International Law, but mere subordinate members of the larger and Paramount political society, the true sovereign State, the British Empire."

Thus the relation of the Native States to the British Crown is different from any relation known to International Law. The Native States are

subject to the suzerainty of Great Britain, and are debarred from all external relations. Even in their relations with the British Government they are declared not to be subject to the ordinary rules of International law. Nevertheless, for other purposes, and within the domain of private International law, such States are to be regarded as separate political societies, and as possessing an independent civil, criminal and fiscal jurisdiction. (*Sirdar Gurdial Sing vs. the Rajah of Faridkote. Pitt Cobbett, p. 227*).

Since the connexion between the British Government and the Native States is not one based on International Law, Prof. Westlake suggests that the connexion between the King's authorities in India and his protected allies or rulers of the Native States is a constitutional tie. "The Native Princes who acknowledge the Imperial Majesty of the United Kingdom have no International existence ; to International Law a State is sovereign which means itself as independent ;" and if no foreign relations are allowed it, Westlake will not allow it to be called even semi-sovereign, for "a State is semi-sovereign to the extent of the foreign relations which the degree of its practical dependence allows it." He goes on to argue that, since the British power alone represents to the outside world the unit, India, the political relations possessing any degree of fixity which exist between the component parts of the unit are constitutional. The position of a Native State "appears to be that of a separate part of the dominions of the King-Emperor, as New South Wales and British India are other such separate parts." The Governor-General in Council has been progressively receiving from Parliament power to make laws "for all servants of the Company within the dominions of the Princes and States in alliance with the Company ;" "for all British Subjects of Her Majesty, within the dominions of Princes and States in alliance with Her Majesty, whether in the service of the Government of India or otherwise" ; and "for native Indian subjects of Her Majesty without and beyond British India." But with this there comes into combination the fact that, as expressed in the preamble to the Indian Act XXI of 1879, "by treaty, capitulation, agreement, grant, usage, sufferance, and other lawful means, the Governor-General of India in Council"—this time not representing the special Government of British India, but as the executive organ for exercising the Imperial supremacy—"has power and jurisdiction within diverse places beyond the limits of British India." Thus reviewing the intrusion of foreign jurisdic-

tion into the States, Westlake argues that their position has been imperceptibly shifted from an International to an Imperial basis. The recent trend of events appears to confirm Professor Westlake's contention. According to the Government of India (Amendment) Act of 1916 rulers and subjects of the Native States can be appointed to civil posts and military commissions and nominated for the Legislative Councils. A Native Prince was invited to be present at the Imperial Conferences of 1917 and 1918. The Montagu-Chelmsford Reform Scheme contains proposals for the formation of a Council of Princes to be presided over by the Viceroy and for the joint deliberation and discussion between the Council of Princes and the Council of States. After all, both the Native States and the British Government are striving for the same end, *viz.* the progressive welfare of the people. The interests are so common, the points of contact are so many that it is inevitable that in the process of time the Native States should abandon their isolated, atomic existence and become joint partners in the great Imperial Commonwealth of Nations.

## § 2. "Declare war or commence hostilities."

The Governor-General in Council has certain powers of levying war without the previous approval of the Secretary of State in Council. If hostilities have actually begun or preparations made for beginning hostilities against British India or a dependent prince or state, or a prince or state protected by treaty of guarantee, he may declare war, commence hostilities, or make treaties for making war against the attacking power, and may even make treaties of guarantee in respect of the possessions of a prince or state in return for assistance against the assailing power. In any case where he commences hostilities or makes a treaty, the action must be reported to the Secretary of State. "*De facto*, of course, the time for serious exercise of these powers has disappeared. But the existence of the power is interesting; no Governor-General or Government of a Dominion has any legal authority to do a single act of sovereignty as regards the declaration of war, the making of peace, or of political treaties of any kind."—(*Keith*.)

## PART V.

## LOCAL GOVERNMENTS.

## General.

## 45. (1) "Subject to the provisions of this Act and

Relation of Local Gov-  
ernments to Governor-  
General in Council.  
[1772, s. 9; 1793, ss. 24,  
40, 41, 43, 44, 1833, ss.  
65, 68; 1893, s. 1 (2);  
1912, s. 1 (1); 1919,  
2nd Sch. Pt. III.]

rules made thereunder"<sup>1</sup>, every Local Government<sup>2</sup> shall obey the orders of the Governor-General in Council, and keep him constantly and diligently informed of its proceedings and of all matters which ought, in its opinion, to be reported to him, or as to which he requires information, and is under his superintendence, direction and control in all matters relating to the government of its province.

[(2)] *Repealed by the Government of India Act, 1919.*

## (3) The authority of the Local Government is not

[1833, s. 67; 1912, s.  
1 (1).]

superseded by the presence in its province of the Governor-General.

## § 1. "Subject to the provisions of this Act and rules made thereunder."

Before the passing of the Reforms Act of 1919, the Local Governments were merely responsible agents of the central Government of India—they were wholly responsible for all their acts to, and derived all their powers from, the central Government. But with the introduction of partial responsible government in the Provinces, the relations between the central and local governments have had necessarily to be altered. The Provincial Executive is now divided into two parts—the official, and the popular—each responsible to a different authority. The control of the Central Government over the popular half of the local Government cannot, there-

fore be as strict as that over the official half. The powers of the Central Government in regard to provincial subjects will henceforth vary according as the subjects are reserved or transferred. The intervention of the Central Government in transferred subjects will now generally be confined to two cases *viz*, (1) to safe-guard the administration of All-India subjects, and (2) to decide questions arising between two or more provinces, failing agreement between the provinces concerned. In respect, however, of certain special subjects, the Government of India have the power to make the subjects "provincial subject to Indian legislation." In the case of reserved subjects there are now specific restrictions on the Government of India's general powers of control, but that control would presumably vary according as the subjects are administered by provincial governments as agents of the Government of India or as provincial functions properly so called. In respect of the former the Government of India's powers of control remain absolute, but in regard to the latter the Government of India are expected to exercise their power of control with regard to the purpose of the Reforms Act of 1919.

*See paragraphs 16—41 of the Functions Committee's Report, pp. 232—251 of Part II of this book.*

## § 2 "Local Government."

Sub-section (4) of Section 134 of this Act defines a Local Government thus—

"Local Government means, in the case of a Governor's province, Governor in Council or the Governor acting with ministers (as the case may require), and, in the case of a province other than a Governor's province, a Lieutenant-Governor in council, Lieutenant-Governor or Chief Commissioner "

By the Indian General Clauses Act (X of 1897) it is defined to mean the person authorized by law to administer executive government in the part of British India in which the Act containing the expression operates, and to include a Chief Commissioner.

Sub-section (2) of Section 45 authorising even Local Governments to, commence hostilities and make treaties in case of sudden emergency or imminent danger has been repealed by the Government of India Act, 1919.

Classification of central and provincial subjects. [1919, s. 1.]

**45A.**—"(1) Provision may be made by rules under this Act.—

(a) for the classification of subjects,<sup>1</sup> in relation to the functions of government, as central and provincial subjects, for the purpose of distinguishing the functions of local governments and local legislatures from the functions of the Governor-General in Council and the Indian legislature ;

(b) for the devolution of authority<sup>2</sup> in respect of provincial subjects to local governments, and for the allocation of revenues<sup>3</sup> or other moneys to those governments ;

(c) for the use under the authority of the Governor-General in Council of the agency of local governments<sup>4</sup> in relation to central subjects, in so far as such agency may be found convenient, and for determining the financial conditions of such agency ; and

(d) for the transfer from among the provincial subjects of subjects (in this Act referred to as "transferred subjects") to the administration of the governor acting with ministers appointed under this Act,<sup>5</sup> and for the allocation of revenues or moneys for the purpose of such administration.<sup>6</sup>

(2) "Without prejudice to the generality of the foregoing powers, rules made for the above-mentioned purposes may—

(i) regulate the extent and conditions of such devolution, allocation, and transfer ;

(ii) provide for fixing the contributions payable by local governments to the Governor-

General in Council<sup>7</sup> and making such contributions a first charge on allocated revenues or moneys ;

- (iii) provide for constituting a finance department<sup>8</sup> in any province, and regulating the functions of that department ;
- (iv) provide for regulating the exercise of the authority vested in the local government of a province over members of the public services<sup>9</sup> therein ;
- (v) provide for the settlement of doubts<sup>10</sup> arising as to whether any matter does or does not relate to a provincial subject or a transferred subject, and for the treatment of matters which affect both a transferred subject and a subject which is not transferred ; and
- (vi) make such consequential and supplemental provisions as appear necessary or expedient :

“Provided that, without prejudice to any general power of revoking or altering rules under this Act, the rules shall not authorise the revocation or suspension of the transfer of any subject except with the sanction of the Secretary of State in Council.

(3) “The powers<sup>11</sup> of superintendence, direction, and control over local governments vested in the Governor-General in Council under this Act shall, in relation to transferred subjects, be exercised only for



such purposes as may be specified in rules made under this Act, but the Governor-General in Council shall be the sole judge<sup>12</sup> as to whether the purpose of the exercise of such powers in any particular case comes within the purposes so specified.

(4) "The expressions "central subjects" and "provincial subjects"<sup>13</sup> as used in this Act mean subjects so classified under the rules.

"Provincial subjects, other than transferred subjects, are in this Act referred to as "reserved subjects."

It is in the Provinces that the chief constitutional changes have been made in the first instance, and this section, which forms the first section of the Government of India Act, 1919, therefore deals with the Provinces.

### § 1. "Classification of Subjects."

This sub-section provides for the making of rules for the purpose of classifying subjects in relation to the functions of Government as central and Provincial subjects. The lists of Central and Provincial subjects, as approved by the Joint Select Committee, is to be found in Appendix F to the Minutes of Evidence taken by the committee (*printed post in Part II of this book*). The plan and principle of such division are thus described in para. 238 of the M. C. Report—

"It is time to show how we propose that the sphere of business to be made over to the control of the popular element in the Government should be demarcated. We assumed in paragraphs 212 and 213 above that the entire field of provincial administration will be marked off from that of the Government of India. We assumed further that in each province certain definite subjects should be transferred for the purpose of administration by the ministers. All subjects not so transferred will be reserved to the hands of the Governor in Council. The list of transferred subjects will of course vary in each province ; indeed, it is by variation that our scheme will be adjusted to varying local conditions. It will also be susceptible of modification at subsequent stages. The determination of the list for each province will be a matter for careful investigation, for

which reason we have not attempted to undertake it now. We could only have done so if after setting the general principles on which the lists should be framed we had made a prolonged tour in India and had discussed with the Government and people of each province the special conditions of its own case. This work should, we suggest, be entrusted to another special committee similar in composition to, but possibly smaller in size than, the one which we have already proposed to constitute for the purpose of dealing with franchises and constituencies. It may be said that such a task can be appropriately undertaken only when our main proposals are approved. We find it difficult, however, to believe that any transitional scheme can be devised which will dispense with the necessity for some such demarcation ; and for this reason we should like to see the committee constituted as soon as possible. It should meet and confer with the other committee which is to deal with franchises, because the extent to which responsibility can be transferred is related to the nature and extent of the electorate which will be available in any particular province. The committee's first business will be to consider what are the services to be appropriated to the provinces, all others remaining with the Government of India. We suggest that it will find that some matters are of wholly provincial concern, and that others are primarily provincial, but that in respect of them some statutory restrictions upon the discretion of provincial Governments may be necessary. Other matters again may be provincial in character so far as administration goes, while there may be good reasons for keeping the right of legislation in respect of them in the hands of the Government of India. The list so compiled will define the corpus of the material to which our scheme is to be applied. In the second place the committee will consider which of the provincial subjects should be transferred ; and what limitations must be placed upon the ministers' complete control of them. Their guiding principle should be to include in the transferred list those departments which afford most opportunity for local knowledge and social service, those in which Indians have shown themselves to be keenly interested, those in which mistakes which may occur though serious would not be irremediable, and those which stand most in need of development. In pursuance of this principle we should not expect to find that departments primarily concerned with the maintenance of law and order were transferred. Nor should we expect the transfer of matters which vitally affect the well-being of the masses who may not be adequately represented

in the new councils, such for example as questions of land revenue or tenant rights. As an illustration of the kind of matters which we think might be treated as provincial and those which might be regarded as transferred we have presented two specimen lists in an appendix to this report. We know that our lists cannot be exhaustive ; they will not be suitable to all provinces , they may not be exactly suitable to any province ; but they will serve at all events to illustrate our intentions if not also as a starting point for the deliberations of the committee. Our lists are in the main mere categories of subjects. But we have mentioned by way of illustration some of the limitations which it will be necessary to impose or maintain. In dealing with each subject the powers of the provincial legislatures to alter Government of India Acts on that subject will have to be carefully considered. We have indicated in paragraph 240 below certain other reservations which seem to us necessary. On the publication of this report we should like to see the lists discussed in the provincial councils and considered by the provincial Governments, so that the committee may have ready at hand considered criticisms upon the applicability of our suggestions to the circumstances of each particular province."

The *Committee on Division of Functions* appointed in accordance with the above recommendations of the M. C. R. furnish two lists showing (i) all-India subjects and (ii) provincial subjects. Among the most important subjects included in the all-India list are—naval, military and aerial matters, foreign relations and relations with native states, railways (with certain exceptions), communications of military importance, posts and telegraphs, currency and coinage, sources of imperial revenue, law of stamps, property, civil rights, etc, commerce, shipping and major ports, criminal law, central police organization and railway police, possession and use of arms, central institutions of scientific and industrial research, ecclesiastic administration and all-India services. In the provincial list the most important items are—local self-government, medical administration and education (with certain exceptions), sanitation, provincial buildings, communication other than those of military importance, light and feeder railways (in certain cases), irrigation and canals, land revenue, administration, agriculture, civil veterinary department, fisheries, co-operative societies, forests, excise, development of industries, administration of justice, police, prisons and reformatories, control of newspapers and presses, provincial borrowing. The above classification is the basis of the

division of functions between the central Government and the provincial Government.

## § 2 "The devolution of Authority."

The nature and method of the devolution of authority in respect of provincial subjects to local governments are thus described in para. 26 of the *Report of the Committee on Division of Functions*—

"The existing control by the Government of India over provincial administration finds expression in the provisions of a considerable number of statutes and regulations which especially reserve power to the Governor-General in Council, or require his previous sanction or subsequent approval to action taken by the provincial Governments. We have received from the provincial Governments a number of detailed proposals for the relaxation of this control in particular matters, either by the delegation of powers or by the amendment of the Act concerned ; and the Government of India have also supplied us with departmental Memoranda treating the question on similar lines. We are not in a position to deal with these detailed suggestions, but we recommend that the matter should be carefully examined now in the light of the material collected and of the new relations to be established between the central and provincial Governments. In the Memorandum dated the 19th February (Annexure III) the Government of India refer to the matter as follows 'In respect of these same subjects (*i.e.* subjects that the provinces administer but which are not transferred subjects) the Government of India will undertake a formal and systematic scheme of devolution of their authority, such scheme to be compatible with the exercise of their control in matters which they regard as essential to good government.' If, in the necessary interval before the reforms scheme takes effect, the existing statutes are revised so as to eliminate provisions necessitating references to the Government of India which are considered no longer necessary, the position will be simplified and the provinces will have from the start a freer hand in dealing with provincial subjects."

The Government of India accepted the above recommendation of the Functions Committee in para. 9 of their Fourth Despatch of April 16, 1919, and with the object of giving effect thereto they have since carefully examined all provisions of the kind referred to which are contained in the Indian Statute Book. The results of this examination are embodied in the *Devolution Act of 1920* or "An Act to relax the control in certain

respects of the Governor General in Council over Local Governments and to transfer to such Governments certain powers now exercisable by the Governor-General in Council" (Act No. XXXVIII of 1920, published in the Gazette of India, September 18, 1920) which has recently been passed by the Indian Legislative Council.

The amendments of the existing legislation are numerous but all fall under two classes. One class of amendments substitutes for the Governor-General in Council, the Local Government as the statutory authority for the performance of certain functions. The other class removes the necessity hitherto imposed on Local Governments for obtaining in certain cases the previous sanction of the Governor-General in Council or abrogates the control at present exercised by the Central Government over Local Governments. Taken together the amendments constitute a very substantial delegation of authority to Local Governments and are thus an important development of the policy embodied in the Government of India Act, 1919.

### § 3. "The Allocation of Revenues or moneys."

Rules based on the Meston Committee's Report (*printed post in Part II*) provide for the necessary financial arrangements between the Central and Provincial Governments, under which certain sources of revenue are definitely allocated to the Provinces in accordance with the following proposals in the Montagu-Chelmsford Report—

"The present settlements by which the Indian and Provincial Governments share the proceeds of such certain heads of revenues are based primarily on the estimated needs of the provinces, and the Government of India disposes of the surplus. This system necessarily involves control and interference by the Indian Government in provincial matters. An arrangement which has on the whole worked successfully between two official Governments would be quite impossible between a popular and an official Government. Our first aim has therefore been to find some means of entirely separating the resources of the Central and Provincial Governments.

"*A new basis.*—We start with a change of standpoint. If provincial autonomy is to mean anything real clearly the provinces must not be dependent on the Indian Government for the means of provincial development. Existing settlements do indeed provide for ordinary growth of expenditure, but for any large and costly innovations provincial Govern-

ments depend on doles out of the Indian surplus. Our idea is that an estimate should first be made of the scale of expenditure required for the upkeep and development of the services which clearly appertain to the Indian sphere ; that resources with which to meet this expenditure should be secured to the Indian Government ; and that all other revenues should then be handed over to the provincial Governments which will thenceforth be held wholly responsible for the development, of all provincial services. This, however, merely means that the existing resources will be distributed on a different basis, and does not get over the difficulty of giving to the central and provincial Governments entirely separate resources. Let us see how this is to be done.

*“Complete separation of revenues.*—Almost everyone is agreed that a complete separation is in theory desirable. Such differences of opinion as we have met with have mostly been confined to the possibility of effecting it in practice. It has been argued for instance that it would be unwise to narrow the basis on which both the central and provincial fiscal systems are based. Some of the revenues in India, and in particular land revenue and excise, have an element of precariousness; and the system of divided heads, with all its drawbacks, has the undeniable advantage that it spreads the risks. This objection will however, be met if, as we claim, our proposed distribution gives both the Indian and Provincial Governments a sufficient measure of security. Again we have been told that the complete segregation of the Government of India in financial matters will lower its authority. This argument applies to the whole subject of decentralization and provincial autonomy. It is not necessary for us to meet it further. Our whole scheme must be even and well-balanced, and it would be ridiculous to introduce wide measures of administrative and legislative devolution and at the same time to retain a centralized system of finance.

*“Abolition of divided heads.*—There are two main difficulties about complete separation. How are we to dispose of the two most important heads which are at present divided—land-revenue and income-tax—and how are we to supplement the yield of the Indian heads of revenue in order to make good the needs of the central Government? At present the heads which are divided in all or some of the provinces are:—land-revenue, stamps, excise, income-tax and irrigation. About stamps and excise there is no trouble. We intend that the revenue from stamp duty should be discriminated under the already well-marked sub-heads *General* and *Judicial* ; and that the former should be made an Indian

and the latter a provincial receipt. This arrangement will preserve uniformity in the case of commercial stamps where it is obviously desirable to avoid discrepancies of rates ; and it will also give the provinces a free hand in dealing with Court-fee-stamps, and thus provide them with an additional means of augmenting their resources. Excise is at present entirely a provincial head in Bombay, Bengal, and Assam, and we see no valid reason why it should not now be made provincial throughout India. At this stage the difficulties begin. Land revenue, which is by far the biggest head of all, is at present equally shared between the Indian and all the Provincial Governments, except that Burma gets rather more than one-half and the United Provinces get rather less. Now land revenue assessment and collection is so intimately concerned with the whole administration in rural areas that the advantages of making it a provincial receipt are obvious. But other considerations have to be taken into account. One substantial difficulty is that, if land revenue is made entirely provincial, the Government of India will be faced with a deficit and its resources must be supplemented by the provinces in some form or other. Moreover, famine expenditure and expenditure on major irrigation works are for obvious reasons closely connected with land revenue, and if the receipts from that head are made provincial it logically follows that the provinces should take over the very heavy liability for famine relief and protective works. An argument of quite another character was also put forward. We were told that in the days of dawning popular government in the provinces it would be well that the Provincial Government should be able to fall back on the support of the Government of India (as, if the head were still divided, it would be able to do) when its land-revenue policy was attacked. But it is just because divided heads are not regarded as merely a financial expedient but are, and so long as they survive will be, viewed as a means of going behind the Provincial Government to the Government of India, that we feel sure that they should be abolished. We propose, therefore, to make land revenue, together with irrigation, wholly provincial receipts. It follows that the provinces will become entirely liable for expenditure on famine relief and protective irrigation works. We shall explain shortly what arrangements we propose for financing famine expenditure. The one remaining head is income-tax. We see too very strong reasons for making this an Indian receipt. First, there is the necessity of maintaining a uniform rate throughout the country. The inconveniences, parti-

cularly to the commercial world, of having different rates in different provinces are manifest. Secondly in the case of ramifying enterprises with their business centre in some big city, the province in which the tax is paid is not necessarily the province in which the income was earned. We have indeed been told that income tax is merely the industrial or professional complement of the land revenue, and that to provincialize the latter, while Indianizing the former, means giving those provinces whose wealth is more predominantly agricultural, such as the United Provinces and Madras, an initial advantage over a province like Bombay, which has very large commercial and industrial interests. Another very practical argument is that the tax is collected by provincial agency, and that if provincial Governments are given no inducement, such as a share of the receipts or a commission on the collections which is only such a share in disguise, there will be a tendency to slackness in collection and a consequent falling off in receipts. We admit that these arguments have force; but we are not prepared to let them stand in the way of a complete separation of resources. Equality of treatment as between one province and another must be reached so far as it is possible in the settlements as a whole, and it is not possible to extend the principle of equality to individual heads of revenue. If it should be found that receipts fall off it may be necessary to create an all-Indian agency for the collection of the tax, but this we should clearly prefer to retaining it as a divided head. To sum up: we propose to retain the Indian and provincial heads as at present, but to add to the former income-tax and general stamps, and to the latter land revenue, irrigation, excise, and judicial stamps. No heads will then remain divided."—*M. C. R. paras. 200-203*

As regards this difficult question of allocation of revenues the Joint Committee in their report on the Draft Rules, adopt the fundamental features of the scheme formulated by Lord Meston's *Committee on Financial Relations*. The Joint Committee are definitely opposed to making income-tax a provincial asset. They believe that the dissatisfaction which has been expressed particularly in three Presidencies and by the Bombay Government is inevitable in distributing resources between the Central Government and the Provincial Government and that the impossibility of removing by a stroke of the pen the inequalities which have resulted from long-standing historical causes has been overlooked.

The Joint Committee by way of alleviating disappointments ordain approximately a twenty-five per cent. provincial share of income-tax and



supertax receipts. The assessment of this is governed by the new rule fifteen. In no case is the initial contribution payable by any province to the Central Government to be increased, but a gradual reduction of the aggregate contribution should be the sole means of attaining the theoretical standards recommended by the Meston Committee in paragraph twenty-seven.

The Joint Committee strongly urge that the Government of India and the Secretary of State should, in regulating the financial policy, make it their constant endeavour to render the Central Government independent of provincial assistance at the earliest possible date. The Committee specially recognise the peculiar financial difficulties of Bengal which they specially commend to the Government of India's special consideration.

*For further details see the Government of India's First Reforms Despatch, paras. 56-61, the Functions Committee's Report, the Meston Committee's Report (all printed in Part II of this book), and the Montagu-Chelmsford Report (paras. 205-207, Documents I, pp. 497-499).*

#### § 4. "Use of the agency of local Governments."

Provincial subjects represent the special sphere of activity allotted to the Provinces, but, apart from the administration of Provincial subjects the Provincial Governments have to discharge in their own Provinces many duties on behalf of the Central Government in relation to central subjects, *i.e.*, subjects which are to remain under the full control of the Central Government, such for instance, the administration of customs and shipping laws. The distinction between these agency functions of the Provincial Governments and their functions in relation to Provincial subjects is thus stated in para 12 of the Functions Committee's Report—

"We recognise the distinction drawn between the two classes of functions discharged by provincial Governments—(1) Agency functions in relation to All-India subjects and (2) Provincial functions properly so called. The distinguishing feature of the work done in discharge of agency functions is that it relates to subjects in which All-India interests so far predominate that full ultimate control must remain with the Government of India, and that, whatever the extent of the authority in such matters for the time being delegated by the Government of India to the provinces as their agents, it must always be open to the Government of India to vary the authority and, if need be, even to withdraw the authority altogether. Provincial functions relate to subjects in which, to use

the words of the Government of India Memorandum, the interests of the provinces essentially predominate, and in which provincial Governments are therefore to have acknowledged authority of their own. We recognise the difficulty of stating the matter in more precise terms. Circumstances, and the experience gained in the working of the existing local Governments, have largely decided in practice what subjects must fall in the provincial class ; but the general subordination of local Governments to the Government of India under the terms of the Government of India Act, and centralization in finance, have in the past tended to obscure the actual dividing line between All-India and provincial subjects, which also governs the separation in the provinces of agency from provincial functions." In the case of Provincial subjects authority is, with certain qualifications, definitely committed to Provincial Governments ; in the case of Central subjects their agency is employed merely as a matter of convenience, and it is, therefore, always open to the Central Government to cease to employ such agency, and itself to undertake the entire work of administration through its own officials. The position with regard to the "agency functions" of Provincial Governments is to be defined by rules providing for use by the Government of India of the agency of Local Governments in relation to central subjects, so far as it may be found convenient to use such agency.

**§ 5. "Transfer of subjects to the administration of the governor acting with ministers appointed under this Act."**

The Announcement of 20th August, 1917, was based on the principle that the goal of responsible government is to be reached by a gradual transfer of responsibility to representatives of the people. A new type of Executive Government has been established in the Provinces for the purpose of giving effect to this plan of gradual transfer of responsibility. The new Provincial Governments are of a composite character, and contain both an official and a non-official, or popular, element. On the official side the Government is carried on by a Governor assisted by an Executive Council ; on the popular side, the new Government consists of the Governor and of Ministers who are elected members of the Legislative Council appointed by the Governor. For the purpose of allotting to each section of this dual Government its own sphere of duty, the work of the Provincial Government has been divided into two parts. certain subjects, called

"transferred subjects", are administered by the Governor acting with the Minister in charge of the subjects, while other subjects, called "reserved subjects," remain in charge of the Governor in Council. Each side has thus its own share in the conduct of the Government of the Province, and the respective shares have been defined in such a way as to fix on each section responsibility for its own work, while co-ordination is achieved by the influence of the Governor, who is associated with both halves of the Government, and has power to summon meetings of his Executive Council and his Ministers for the purpose of joint deliberation whenever he sees fit to do so. Future progress will be made by the transfer of further portions of the field of administration from the official to the non-official section of the Government after periodical surveys of existing conditions by Commissions appointed by Parliament. These are the essential features of the plan, described in para 218\* of the Montagu-Chelmsford Report and embodied in the Reforms Act of 1919, on which the development of responsible Government in the Provinces depends.

The criticisms to which this plan of "dyarchy", or, as Lord Sinha put it, "the system of specific devolution," has been subjected are reviewed in the Government of India's First Reforms Despatch and in the speeches delivered in the House of Lords by Lords Sinha and Selborne (*all printed in Part II of this book*). But we should notice here the alter-

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\* "We propose therefore that in each province the executive Government should consist of two parts. One part would comprise the head of the province and an executive council of two members. In all provinces the head of the Government would be known as Governor, though this common designation would not imply any equality of emoluments or status, both of which would continue to be regulated by the existing distinctions, which seem to us generally suitable. One of the two executive councillors would in practice be a European qualified by long official experience, and the other would be an Indian. It has been urged that the latter should be an elected member of the provincial legislative council. It is unreasonable that choice should be so limited. It should be open to the Governor to recommend whom he wishes. In making his nominations, the Governor should be free to take into consideration the names of persons who had won distinction whether in the legislative council or any other field. The Governor in Council would have charge of the reserved subjects. The other part of the Government would consist of one member or more than one member, according to the number and importance of the transferred subjects, chosen by the Governor from the elected members of the legislative council. They would be known as ministers. They would be members of the executive Government but not members of the executive council; and they would be appointed for the lifetime of the legislative council, and if re-elected to that body would be re-eligible for appointment as members of the executive. As we have said, they would not hold office at the will of the legislature but at that of their constituents. We make no recommendation in regard to pay."

native scheme for a Unitary Government which was put forward by the heads of five Provinces (*See Majority Minute by Heads of Provinces Part II, pp. 23-30*). This scheme provided for an Executive Council which was to consist of an equal number of officials and non-officials, the latter being selected from the elected members of the legislative council, there was to be no division of subjects, and no distinction within the council between the functions of official and non-official members. The Government of India have made a careful examination of this alternative scheme. They point out that it admittedly does not enable responsibility for any act of Government to be fixed on any member of the Executive, and that, while claiming to be a unitary form of Government, it is open to the objection that in fact it involves a disguised dualism, which, owing to the different mandates of the official and non-official members, will, in the absence of any division of functions, almost inevitably involve them in conflict over the whole range of their duties. In H. E. Lord Chelmsford's Minute (*Part II, p. 144*) stress is laid on the failure of this alternative scheme to give effect to the basic principle of the gradual transfer of responsibility. The Rt. Hon. Mr. Montagu thus summarises the position in his *Memorandum on the Reforms Bill of 1919*.—

“While the scheme for dyarchy, or a dualised form of Government in the Provinces has been a target for much criticism, no alternative plan has yet been put forward which is consistent with the Announcement of the 20th August in providing for the gradual transfer of responsibility and thus enabling advance to be made step by step to the ultimate goal. The alternative plans suggested which attempt to eliminate dualism are subject to two fatal defects :—(1) at the outset they give no such responsibility to the non-official element in the Government as will be recognisable by the Councils or their electorates, and no certainty of control to the Councils over any functions of Government; and (2) they provide no means whereby such responsibility and control could be ultimately secured except by a sudden change from official to popular Government, which would take effect simultaneously with respect to all provincial functions. The scheme of the Joint Report does give immediate responsibility to the Ministers who represent the popular element in the Legislative Councils in respect of some departments of the administration though as long as there is a division of functions between an official and a non-official section, such responsibility cannot be complete; at the same time by bringing the Ministers into touch, both at joint meetings and in the discharge

of their own duties, with the work of the reserved departments, it gradually familiarises them with the needs of those departments and considerations affecting their administration, and thus prepares the way for the assumption by Ministers of further responsibility by degrees as additional subjects are transferred, until the ultimate goal of complete responsibility has been attained.

This sub-section provides for the making of rules for the transfer of some Provincial subjects to the administration of the Governor acting with the Ministers in charge of the subject. Provincial subjects other than transferred subjects, referred to as "reserved subjects" remain in charge of the Governor in Council. It should be noted that the Governor in Council, in addition to being responsible for reserved subjects, is also normally responsible for the work which falls upon a local Government as the Agent of the Governor-General in Council in relation to central subjects.

*See Notes under Sec. 19A*

### § 6 "Allocation of revenues or moneys for the administration of Transferred Subjects."

This sub-section also authorises the making of rules for the allocation of provincial funds for the administration of transferred subjects. The proposals contained in the Montagu Chelmsford Report (*paras 255-257, Documents I pp. 535-538*) are to the effect that the revenue from reserved and transferred subjects shall be thrown into a "*common pool*" from which the two halves of the Government will draw funds for their respective requirements. The amount which each is to draw is to be settled annually by the Executive Government as a whole, the Governor being the deciding authority where the Executive Council and Ministers fail to agree.

"The first charge on Provincial revenues will be the contribution to the Government of India; and after that the supply for the reserved subjects will have priority. The allocation of supply for the transferred subjects will be decided by the Ministers. If the revenue is insufficient for their needs, the question of new taxation will be decided by the Governor and the Minister". (M. C. R. para 256)

These proposals have been criticised by the Government of India in their First Reforms Despatch of 5th March, 1919, in which a scheme for what is called the "*separate purse*" system, under which each section of

the Provincial Government is to have a separate purse, instead of both sections drawing on a joint purse, has been put forward (*Despatch, paras 64-73, Part II, pp. 83-96*).

The terms in which the power of making rules as to allocation of provincial funds has been conferred by this sub-section leave open the question as to whether provincial finance is to be on the basis of one joint purse or of two separate purses.

The Joint Select Committee have given much attention to the difficult question of the principle on which the provincial revenues and balances should be distributed between the two sides of the provincial governments. "They are confident that the problem can readily be solved by the simple process of common sense and reasonable give-and-take, but they are aware that this question might, in certain circumstances, become the cause of much friction in the provincial government, and they are of opinion that the rules governing the allocation of these revenues and balances should be framed so as to make the existence of such friction impossible. They advise that, if the Governor, in the course of preparing either his first or any subsequent budget, finds that there is likely to be a serious or protracted difference of opinion between the executive council and his ministers on this subject, he should be empowered at once to make an allocation of revenue and balances between the reserved and transferred subjects, which should continue for at least the whole life of the existing legislative council. The Committee do not endorse the suggestion that certain sources of revenue should be allocated to reserved, and certain sources to transferred subjects, but they recommend that the Governor should allocate a definite proportion of the revenue, say, by way of illustration, two-thirds to reserved and one-third to transferred subjects, and similarly a proportion, though not necessarily the same fraction, of the balances. If the Governor desires assistance in making the allocation, he should be allowed at his discretion to refer the question to be decided to such authority as the Governor-General shall appoint. Further, the Committee are of opinion that it should be laid down from the first that, until an agreement which both sides of the Government will equally support has been reached, or until an allocation has been made by the Governor, the total provisions of the different expenditure heads in the budget of the province for the preceding financial year shall hold good."

"The Committee desire that the relation of the two sides of the Government in this matter, as in all others, should be of such mutual sym-

pathy that each will be able to assist and influence for the common good the work of the other, but not to exercise control over it. The budget should not be capable of being used as a means for enabling ministers or a majority of the legislative council to direct the policy of reserved subjects; but on the other hand the executive council should be helpful to ministers in their desire to develop the departments entrusted to their care. On the Governor personally will devolve the task of holding the balance between the legitimate needs of both sets of his advisers." (J. S. C. R.)

### § 7. "Fixing the contributions payable by Local Governments to the Governor-General in Council."

With regard to this subject the Montagu-Chelmsford Report contains the following suggestion—

"We agreed that in fixing contributions it was undesirable and unnecessary to pay regard to the growing revenues of the provinces. We agreed also that the contributions should be of fixed amounts. We saw that equality of contribution was impracticable, because we have not a clean slate. In spite of the variations in income which result from the permanent settlement in some areas, stereotyped scales of expenditure have grown up, which make it useless to attempt any theoretic calculation on which a uniform contribution from the provinces could be based, such as an equal percentage of revenues or a contribution fixed on a population basis. This led us to look for some plan which would fit most closely into the existing facts.

"Starting with an estimate (based on the budget figures for 1917-18 subject to some adjustments) of the gross revenue of all provinces when all divided heads have been abolished, and deducting therefrom an estimate of the normal expenditure of all provinces, including provision for expenditure on famine relief and protective irrigation, we arrived at Rs. 1564 lakhs as the gross provincial surplus. The deficit in the Government of India's budget was Rs. 1362 lakhs. This left Rs. 201 lakhs, or about 13 per cent. of the total gross surplus as the nett surplus available to the provinces. We would propose to assess the contribution from each province to the Government of India as a percentage of the difference between the gross provincial revenue and the gross provincial expenditure. On the basis of the figures which we have taken this percentage would be 87. The contributions to the Government of India would form the first

charge upon the provincial revenues. The way in which our plan would work out in practice can be gathered from the following figures :—

Province.	Gross provincial revenue.	Gross provincial expenditure.	Gross Provincial surplus.	Contribution (87 per cent. of col. 4).	Nett provincial surplus.
I	2	3	4	5	6
Madras ...	13,31	8,40	4,91	4,28	63
Bombay ...	10,01	9,00	1,01	88	13
Bengal ...	7,54	6,75	70	69	10
United Provinces	11,22	7,47	3,75	3,27	48
Punjab ...	8,64	6,14	2,50	2,18	32
Burma ...	7,69	6,08	1,61	1,40	21
Bihar and Orissa.	4,04	3,59	45	39	6
Central Provinces.	4,12	3,71	41	36	5
Assam ...	1,71	1,50	21	18	3
Total ...	68,28	52,64	15,64	13,63	2,01

*N. B.*—The Punjab figures in column 5 should be reduced and those in column 6 raised by  $3\frac{1}{2}$  lakhs in each case to allow for the continued compensation which the province is entitled to receive for the cession of a crore of its balances to the Government of India in 1914.

“We recognize, of course, that the objection will be taken that some provinces even under this plan will bear a very much heavier proportion of the cost of the Indian Government than others. Madras and the United Provinces will be paying 47.4 per cent. and 41.1 per cent. of their remaining revenues to the Government of India, while Bengal and Bombay are paying only 10.1 per cent. and 9.6 per cent. respectively. Our answer is that the objection is one that applies to existing inequalities which we admit that our scheme fails for the present to remove. It merely conti-



nues the disparity which is at present masked by the system of divided heads. But the immediate settlement proposed improves the position of the provinces as a whole by upwards of one million sterling. It is not intended to be of a final nature ; and when revenues develop and a revision takes place under normal conditions an opportunity will arise for smoothing out inequalities. We have already mentioned at the beginning of this part of our report that our proposals generally do not relate to the minor administrations. Then financial transactions are classified as All-Indian ; and with them separate arrangements must continue. (*M. C. R. Para 206.*)

For fuller details see Notes under sec. 45A (1) and the Report of Lord Meston's Committee on Financial Relations (printed in Part II of this book).

### § 8. "A Finance Department."

*See para 74-75 of the Government of India's First Reforms Despatch, Part II, pp. 96-99*

### § 9. "The exercise of authority over members of the Public Services"

The Committee on Division of Functions recommended that the Public Services employed under provincial governments be classified into three divisions, namely, Indian, Provincial and Subordinate. The chief criterion will be the appointing authority. The *Indian services* will be recruited according to methods laid down in statutory orders by the Secretary of State and appointments to these services will be made by the Secretary of State, who will also fix rates of pay, sanction all new appointments, and secure pensions by statutory orders under the Government of India Act. The Committee recommend that statutory rules should provide that no orders affecting adversely emoluments or pensions shall be passed in regard to officers of All-India services in transferred departments without the concurrence of the Governor. As a special measure of protection in the case of the Indian Medical Service they propose that if the medical department is transferred, statutory order should provide that the private practice of officers of the Indian Medical Service will be regulated only by the Secretary of State. They further recommend that the Governor should be charged with the protection of the public services and with the duty of seeing that no orders affecting adversely the pension or emoluments of any officer are passed before they have been considered by both

parts of the government. Appeals against such orders should lie to the Government of India and the Secretary of State, and no officer of an all-India service should be liable to dismissal except by order of the Secretary of State. Questions of promotion, posting and discipline of officers with duties in both reserved and transferred departments should be treated in the manner explained above in connection with the relations of Governor in Council and ministers.

*Provincial Division.* Pending legislation which will regulate recruitment, training, discipline, and the general conditions of the provincial services, it is proposed that the existing rules should *mutatis mutandis* be binding on ministers as regards transferred departments. In regard to pay, allowances, leave etc., the local Governments will be granted wide powers. In the matter of discipline, the main features of the procedure proposed for all-India services should apply to existing members of Provincial services. In case of future entrants all orders affecting emoluments and pensions, and orders of dismissal, should require the personal concurrence of the Governor.

*Subordinate Division.* The rights and privileges of present incumbents should be maintained by means of directions to the Governor in Council as regards reserved subjects and instructions to the Governor in respect of transferred subjects. So far as future entrants are concerned the Governor in Council and Governor and ministers must be left to regulate the entire working of the services.

In conclusion the committee suggest that as far as possible members of all-India services should be secured in the benefits of the conditions under which they were recruited. The principle that alterations shall not press hardly on members of the services should be formally recognised in the future.

*See the Government of India's Memorandum on "The Public Services under the Reforms" (being Annexure IV to the Functions Committee's Report, printed post, Part II) and paras 68-71 of the Functions Committee's Report, Part II, pp. 299-303.*

## § 10. "The Settlement of Doubts."

This sub-section authorises the making of rules for the settlement of doubts as to whether any matter does or does not belong to a transferred subject, and for the treatment of matters which affect both a transferred subject and a subject which is not transferred. It empowers the Gover-

nor to settle any question of disputed jurisdiction as between the two sections of the Provincial Government in accordance with the following proposal of the Montagu-Chelmsford Report—

“We realize that no demarcation of subjects can be decisive in the sense of leaving open no matter for controversy. Cases may arise in which it is open to doubt into which category a particular administrative question falls. There will be other cases in which two or more aspects of one and the same transaction belong to different categories. There must, therefore, be an authority to decide in such cases which portion of the Government has jurisdiction. Such a matter should be considered by the entire Government, but its decision must in the last resort lie definitely and finally with the Governor. We do not intend that the course of administration should be held up while his decision is challenged either in the law courts or by an appeal to the Government of India.”—*M. C. R. para 239.*

As for the treatment of matters which affect both transferred subjects and subjects which are not transferred, reference should be made to paragraphs 60-63 of the Functions Committee's Report (*See pp. 282-286, of Part II of this book*), in which it is proposed that the Governor shall in certain cases submit questions for joint consideration by both sections of his Government, and shall, in case of disagreement, himself be responsible for the decision. (cf. sec. 49 as to the Governor's rule-making power).

It is important to note that, though the Act provides for a division of functions between the Central Government and Provincial Governments similar to that which is to be found in Federal Constitutions, it is not contemplated that questions as to the dividing line between the spheres of the Central and Provincial authorities shall be the subject of legal decision in the Courts. (*M. C. R. paragraph 212 and paragraph 239*). Provision is made by this sub-section for the making of rules which will provide for the settlement of doubts as to whether “any matter does or does not belong to a Provincial subject,” and the intention is that the Rules to be framed shall provide for such doubts being decided by administrative authority, *i.e.*, by the Governor-General in Council subject to the control of the Secretary of State, whose duty it will be to check any tendency on the part of the Central Government to take too restrictive a view as to the subjects included in the Provincial sphere. Reference should also be made to sec. 52B which expressly excludes such questions from consideration by the Courts.

### § 11. "Powers exercised by the Governor-General in Council over transferred subjects."

With regard to the control to be exercised in future by the Governor-General in Council over the administration of Provincial subjects, it is provided by sub-sec. (3) that in relation to transferred subjects, *i.e.*, those Provincial subjects which are transferred to the charge of Ministers, the general powers of control vested in the Governor-General in Council shall be exercised only for the purposes specified in rules. (*Functions Report, paragraphs 16, 17 and 22 pp. 232, 233 and 236 of Part II of the Book*). The purposes for which it is proposed in the Functions Report that the Government of India shall retain power to exercise control in relation to transferred subjects are two, namely—(1) to safeguard the administration of all-India (or central) subjects; (2) to decide questions arising between two or more Provinces, failing agreement between the Provinces concerned. The Act contains no express provision as to the control of the Governor-General in Council over the Provincial Governments in relation to reserved subjects, that is, those Provincial subjects which remain in charge of the official part of the Government (the "Governor in Council"), but sec. 19A enables the Secretary of State in Council by rules to regulate and restrict the exercise of the existing wide powers of control vested in the Secretary of State, the Secretary of State in Council or the Governor-General in Council "in such manner as may appear necessary or expedient in order to give effect to the purposes of this Act"; this section will therefore cover the making of rules regulating the control to be exercised in future by the Government of India over Provincial Governments in relation to reserved subjects (*Functions Report, paragraphs 18-22 pp. 234-237 Part. II*).

### § 12. "The Governor-General in Council shall be the sole judge"

These words are added "in order to make it clear that we do not contemplate such a limitation of the powers of the Governor-General in Council as would render the exercise of powers open to challenge in the Courts. Our acceptance of the proposal with regard to the specification in rules of the purposes to which the exercise of the powers of the Governor-General in Council will be restricted in relation to transferred subjects is based on the assumption that the making of rules under this provision will be subject to effective Parliamentary control." (*Functions Committee's Report, para 22*.)

## § 13 "Central Subjects and Provincial Subjects"

The Government of India hold that where extra-provincial interests predominate the subject should be treated as "Central", while, on the other hand, all subjects in which the interests of the provinces essentially predominate should be "provincial," and in respect of these the provincial Governments will have acknowledged authority of their own. (*See Functions Committee's Report paras 9-14, and notes under sub-sec. (1) (a) and (1) (c) above.*) For lists of all-India and Provincial subjects, See Part 3 of the Functions Committee's Reports pp. 252-268 of Part II. of this book, and Appendix F. to the Minutes of Evidence before the Joint Select Committee (printed in Part II of this book)

## § 14 "Reserved Subjects and Transferred Subjects."

For what are Reserved and Transferred subjects, *See Notes under sec. 19A*; and for list of Provincial Subjects for transfer, *see Functions Committee's Report, pp. 289-299 and Notes under sec. 19A*

## Governorships.

✓ 46. "(1) The presidencies<sup>1</sup> of Fort William in Bengal, Fort St. George, and Bombay, and the provinces known as the United Provinces, the Punjab, Bihar and Orissa, the Central Provinces, and Assam, shall each be governed, in relation to reserved subjects, by a governor<sup>2</sup> in council, and in relation to transferred subjects (save as otherwise provided by this Act) by the governor acting with ministers appointed under this Act.

Revised system of local government in certain provinces.  
[1919, s 3 (1).]

"The said presidencies and provinces are in this Act referred to as "governor's provinces" and the two first-named presidencies are in this Act referred to as the presidencies of Bengal and Madras."

“(2) The governors of the said presidencies are appointed by His Majesty by warrant under the Royal Sign Manual, and the governors of the said provinces shall be so appointed after consultation with the Governor-General.”

[1919, s. 3 (2).] (3) The Secretary of State may, if he thinks fit, by order revoke or suspend, for such period as he may direct, the appointment of a council for any or all of “the governors’ provinces”; and whilst any such order is in force the governor of the “province” to which the order refers shall have all the powers of the Governor thereof in Council.

### § 1. “The Presidencies.”

These eight Provinces which are referred to as “Governors’ Provinces” are in future to be governed under the dual system of government. Each Province will have a governor, who will be advised in relation to some of the functions of Government (those relating to reserved subjects) by an Executive Council, and in relation to other functions (those relating to transferred subjects) by Ministers. The new form of Provincial Government is not applied to Burma, which, for reasons indicated in M. C. R. para. 198 requires separate treatment.

*See sec. 53. See also Notes under sec. 45A.*

### § 2. “Governor.”

It is to be observed that, although the heads of all the eight provinces are called “Governors,” their position and status are not identical. As the Montagu-Chelmsford Report (para. 218) says, “this common designation would not imply any equality of emoluments or status, both of which would continue to be regulated by the existing distinctions which seem to us generally suitable.” The differences arise mainly from the mode of their appointment and the amount of their salaries. The

Governors of Bengal, Madras and Bombay are appointed by His Majesty by warrant under the Royal Sign Manual; apparently it is meant that such Governors are to be recruited mainly from the ranks of distinguished men who have made their mark in English public life and His Majesty is given an unfettered choice of selection, (though, according to Mr Montagu, "there is nothing in the law which prevents a civil servant being appointed to a Presidency Governorship"—*P. D. H. C.* The Governors of the remaining five provinces are also appointed by His Majesty by warrant under the Royal Sign Manual, but *only after consultation with the Governor-General*, the implication is that they are to be *generally, though not always*, recruited from the ranks of the members of the Indian Civil Service who are distinguished for their administrative ability and experience. The words "*after consultation with the Governor-General*" are expressly inserted, said the Rt. Hon. Mr Fisher in the course of the debate on the Government of India Bill in the House of Commons, "in order to give the Governor-General an opportunity of recommending for appointment to these great responsible posts members of Indian Civil Service who, in his opinion, are found fit to discharge these responsibilities."—*P. D. H. C., Dec. 3, 1919*: That this is not to be the invariable rule is exemplified by the appointment of H. E. Lord Sinha to the Governorship of Bihar and Orissa.

If a vacancy occurs in the office of Governor-General, when there is no successor in India to supply the vacancy, the senior among the Presidency Governors alone holds the office of Governor-General. (Sec. 90). The differences in the amount of the salaries of Governors also bear witness to the original differences among the several provinces arising out of their past history and their inequalities in size and development. From the point of view of salary the Governors of Bengal, Madras and Bombay (and the United Provinces which has been recognised ever since 1833 as an equal with the three older Presidencies), retain their primacy, for they get the highest salary among the Provincial Governors *viz.*, Rs. 1,28,000 per annum. The Governors of the Punjab and Bihar and Orissa get the same salary as Lieutenant-Governors, *viz.* a lakh of rupees per annum, while the Governors of the Central Provinces and of Assam get respectively Rs. 72,000 and Rs. 66,000 per annum.

Further, the Governors of Bengal, Madras and Bombay enjoy the traditional privilege of corresponding direct with the Secretary of State on certain matters, the other Governors have not got this privilege.

Although the several Governors differ in position and status, they wield almost identical powers, and are to be guided by an "Instrument of Instructions." In Appendix II to their Despatch on the Functions Committee's Report the Government of India give the following draft *Instrument of Instructions* to be issued to Governors on appointment by the Secretary of State in Council—

"The Governor is responsible to Parliament for doing his utmost, consistently with the general purpose of the Government of India Act, 1919, to maintain the standards of good administration and to further all changes tending to make India fitted for self-government. He is required to encourage religious toleration, co-operation and good-will among all creeds and classes, to protect the interests of all minorities, to maintain the standards of conduct of the public service and the probity of public finance, and to promote all measures making for the moral, social and industrial welfare of the people and tending to fit all classes of the population without distinction to take their due share in the public life and government of the country.

In particular and without prejudice to the generality of the foregoing:—

- I. The Governor is responsible for maintaining the safety and tranquillity of his province and for using his influence to compose religious and racial animosities, and to prevent religious and racial conflicts ;
- II. The Governor has a general responsibility for seeing that the administration of the transferred subjects by ministers is properly conducted. He will assist his ministers by all the means in his power with information and advice. He will restrict the exercise of the power to act in opposition to his ministers' advice, which is vested in him under section 4 (3) of the Government of India Act, 1919 to cases in which he considers that the consequences of acquiescence would be serious, bearing specially in mind his responsibility for the reserved subjects and the responsibilities laid upon him in clauses I, IV and VII to XII of these instructions.
- III. The Governor is required to advise his ministers in regard to their relations with the provincial legislative council, to support them generally in difficulties so far as possible, and in the event of an adverse vote in the legislative council to



- require the resignation of a minister only when it seems to him that the minister has lost the confidence of the council.
- IV. The Governor is responsible for the due compliance with any orders affecting the administration of transferred subjects which may be issued by the Secretary of State or the Government of India.
- V. The Governor is responsible for bringing to the notice of the minister concerned any observations on the administration of a transferred subject which may be communicated to him by the Government of India.
- VI. In the case of any provincial Bill which appears to the Governor likely to affect any matter hereby specially committed to his charge, or any all-India subject, or any general principles laid down by the Secretary of State or the Government of India for the administration of a reserved subject, the Governor shall, before assenting to such Bill, consider whether he should reserve it for the consideration of the Governor-General.
- VII. The Governor is required to see that no monopoly or special privilege which is inconsistent with the public interest is granted to any private undertaking and that no unfair discrimination in matters affecting commercial or industrial interests is permitted.
- VIII. The Governor is responsible for the safeguarding of the legitimate interests of the European and Anglo-Indian community.
- IX. The Governor is responsible for the protection of all members of the public services in the legitimate exercise of their functions, and in the enjoyment of all recognised rights and privileges.
- X. The Governor is required to secure that in all extensions of educational facilities adequate provision is made for the special needs of the Muslim and any other minority community.
- XI. The Governor is required to secure that the interests of existing educational institutions maintained or controlled by religious bodies are duly protected in the event of any changes of educational policy affecting them adversely.

- XII. The Governor is required to secure that due provision is made for the advancement and social protection of depressed and backward classes and aboriginal tribes.

*For further details see Functions Committee's Report para, 67.*

*Statutory Powers of Governors.* 1 The three Presidency Governors are appointed by His Majesty by warrant under the Royal Sign Manual and the five other provincial Governors are so appointed after consultation with the Governor-General [Sec. 46 (2)].

2. If the appointment of a Council is by order of the Secretary of State revoked or suspended in a Province, the Governor of that Province shall have all the powers of a Governor in Council [Sec. 46 (3).]

3. Every Governor of a Province shall appoint a member of his Executive Council to be Vice-president thereof. [Sec. 48].

4. The Governor may, by rule, direct the manner of authentication of the orders and proceedings of his Government. [Sec. 49 (1)].

5. He may make rules and orders for the more convenient transaction of business in his Executive Council and with his ministers, and for regulating the relation between his Executive Council and his ministers [Sec. 49 (2).]

6. If the members of his Council are equally divided on any question, the Governor shall have a casting vote. [Sec. 50 (1)]

7. He may overrule his Council in certain cases. [Sec. 50 (2)]

8. The three Presidency Governors of Bengal Madras and Bombay may, with the approval of the Secretary of State in Council, and by notification extend the limits of the towns of Calcutta, Madras and Bombay respectively. [Sec. 62.]

9. The Governor shall not be a member of the Legislative Council, but shall have the right of addressing the Council, and may for that purpose, require the attendance of its members. [Sec. 72A (1).]

10. The Governor may dissolve the Council before the expiry of its term, or may extend it for a period not exceeding one year. [Sec. 72B (a) (b).]

11. After the dissolution of the Legislative Council the Governor is to appoint a date for the next session of the Council. [Sec. 72B (c).]

12. The Governor is to appoint times and places for holding the sessions of his Legislative Council [Sec. 72B (2)] He may also prorogue the Council. [Sec. 72B (2).]

13. For the first four years the Governor is to appoint and fix the salary of the President of the Legislative Council. [72C (1) and (5).]

14. His approval is necessary for the elected Deputy President of the Legislative Council. [72C (2)]

15. The Legislative Council may be overruled if in the case of a demand relating to a reserved subject, the Governor certifies that the expenditure provided for by the demand is essential to the discharge of his responsibility for the subject [72D 2 (a).]

16. The Governor has power in cases of emergency to authorize such expenditure as may be in his opinion necessary for the safety or tranquillity of the Province or for the carrying on of any department. [72D 2 (6).]

17. No proposal for the appropriation of any revenues or other moneys for any purpose shall be made except on the recommendation of the Governor communicated to the Council. [72D (2) (c)]

18. If any question arises whether any proposed appropriation of the money does or does not relate to the heads of expenditure specified in [Sec. 72D (3)] the decision of the Governor shall be final. [72D (3)]

19. The Governor may certify, under certain circumstances that a bill or any clause of it or any amendment affects the safety or tranquillity of British India, or any part thereof, and may direct that no further proceedings shall be taken by the Chamber in relation to that Bill. [72D (4)]

20. If a Governor's Legislative Council fails to pass essential legislation the Governor may certify that the passage of the Bill is essential for the discharge of his responsibility for a reserved subject and thereupon the bill becomes an Act on the signature of the Governor. [72E (1).]

21. The previous sanction of the Governor is necessary if any member of any Local Legislative Council introduces any measure affecting the public revenues of a Province or imposing any charge on those revenues. [80 (1)].

22. When a bill has been passed by a Local Legislative Council the Governor may declare that he assents to or withholds his assent from the bill, or he may return the bill to the Council for reconsideration. If he withholds his assent the bill shall not become an Act. In spite the Governor's assent the Governor-General may invalidate the Act by withholding his assent to it (81 and 81A).

23. If the Governor, saving the cases of leave on special duty, or on leave on medical certificate, departs from India to return to Europe his office shall, thereupon, become vacant. [87 (1).]

24. }  
25. } *Same as items No. 44, 45, 46 on p. 166 ante.*  
26. }

**47.** (1) The members of a Governor's executive council<sup>1</sup> shall be appointed by His Majesty by warrant under the Royal Sign Manual, and shall be of such number, not exceeding four,<sup>2</sup> as the Secretary of State in Council directs.

Members of executive councils. [1793, s. 24; 1833, s. 56, 57; 1869, c. 97 s. 8, 1909, s. 2 (1); 1912, s. 1 (1)]

(2) "One" at least of them must be "a" person who at the time of "his" appointment "has" been for at least twelve years in the service of the Crown in India.

[1793, s. 25; 1909 s. 2 (1); 1912, s. 1 (1); 1919, s. 5 (1).]

"(3) Provision may be made by rules under this Act as to the qualifications<sup>3</sup> to be required in respect of members of the executive council of the Governor of a province in any case where such provision is not made by the foregoing provisions of this section."

[1919, s. 5 (2)]

### § 1. "The members of a Governor's Executive Council."

The members of a Governor's Executive Council in all the governors' provinces are all appointed by His Majesty by warrant under the Royal Sign Manual : His Majesty may or may not consult the authorities in India in exercising this power. It is thus a curious anomaly that in the five provinces of the Punjab, the United Provinces, Bihar and Orissa, the Central Provinces and Assam, the status of the members of the Executive Council should appear to be higher than that of the Governors who are appointed by His Majesty *after consulting the Governor-General*. The maximum number of members of Council is four, of which one at least

must be a person who, *at the time of his appointment*, has been for at least twelve years in the service of the Crown in India. The *italicised* words imply that he must have put in at least twelve years' *continuous* service under the Crown in India and that, *at the time of his appointment* as member of the Governor's Executive Council, he must still be in service. It should be noted in this connection, that (1) the words '*at the time of his appointment*' do not occur in the section dealing with the appointment of the members of the Governor-General's Executive Council (*Sec Sec. 36 and the notes thereunder*) ; (2) the wording of this section does not seem to imply that this one member must belong to the Indian Civil Service. he may be recruited from any of the Civil Services of the Crown in India (referred to in sec. 96 B) ; and (3) the person is to have been for at least twelve years (not ten years, as in case of the members of the Governor-General's Executive Council) in the service of the Crown, not in *British India*, but in *India*.

## § 2 "Of such number, not exceeding four"

The Executive Councils will be constituted similarly to the existing Executive Councils in the Presidencies, and the provisions of the Act (sections 46 to 51) relating to Governors in Council will apply. Section 47 of the Government of India Act, 1915, provided that members of a Governor's Executive Council should be appointed by His Majesty by Warrant, and should be of such number, not exceeding four, as the Secretary of State in Council directed, and that two at least of such members must be "persons who at the time of their appointment have been for at least 12 years in the service of the Crown in India." Under the existing system the Executive Councils in the three Presidencies consist normally of three members, of whom two are members of the Indian Civil Service and the third is an Indian. This sub-section provides that the requirement as to previous service under the Crown in India is in future to apply only to one of the members of a Governor's Executive Council, and also repeals a provision, which has become obsolete, that the Commander-in-Chief, while resident in the capital of a Presidency, is temporarily added to the Executive Council of that Presidency. The maximum number of members of an Executive Council is to remain at the existing figure, four. The Montagu-Chelmsford Report proposed that under the new system the Governor's Executive Council should consist of two ordinary members only (paragraph 218), of whom one was in practice to be a European quali-

fied by long official experience and the other an Indian. It was also proposed (paragraph 220) that the Governor should be entitled to appoint one or two additional members to the Council as Members without Portfolio for the purpose of consultation and advice. This proposal met with much criticism, and, in view of the difficulties which its adoption involved (Despatch of 5th March, para 37), was abandoned. But, as the maximum number of four remains, it will be open to the Secretary of State to sanction larger Councils than those proposed in the M. C. Report, and there will be nothing to debar him from advising the appointment of more than one official member if he sees fit to do so. It has been considered undesirable to include in the Act any provision for racial qualification, and the suggestion made by the Government of India, that one seat should be reserved by statute for an Indian (Despatch of 5th March, para. 39), has, therefore, not been adopted; but it is contemplated that in any event Executive Councils will continue to include at least one Indian member, and that, if a second European member is added, there will also be a second Indian member.

The statute puts a definite limit to the number of members of the Executive Council of Governors or, shortly speaking, "Councillors," but, from the wording of sec. 52 it appears that there is to be no statutory limit to the number of ministers who can be appointed by the Governor, "in no province will there be need for less than two ministers while in some provinces more will be required" (*J. S. C. R.*)

The Joint Select Committee are of opinion that the normal strength of an executive council, specially in the smaller provinces, need not exceed two members. They have not, however, reduced the statutory maximum of four, but, if in any case the council includes two members with service qualifications, neither of whom is by birth an Indian, they think that it should also include two non-official Indian members. The Executive Councils of Governors will thus generally contain either (1) one European official member and another non-official Indian, or (2) two official European members and two non-official Indians.

### § 3 "Qualifications of members of Executive Councils"

The Rules under this sub-section are apparently meant to lay down the qualifications for those members who have not the qualifications mentioned in sub-section (2) above; they are apparently meant to lay down qualifications for the non-official Indian Councillors.

Vice-President of council. [1909, s. 4; 1912, s. 1 (1); 1919, 2nd Sch Pt. II]

**48.** Every governor of a "province" shall appoint a member of his executive council to be vice-president thereof.

According to Sec. 51 the vice-president is to preside at a meeting of the executive council with the full powers of a Governor, should the latter be obliged to absent himself from the meeting owing to indisposition or any other cause

**49.—(1)** "All orders and other proceedings of the Government of a Governor's province shall be expressed to be made by the Government of the province, and shall be authenticated as the Governor may by rule direct, so, however, that provision shall be made by rule for distinguishing orders and other proceedings<sup>1</sup> relating to transferred subjects from other orders and proceedings.

"Orders and proceedings authenticated as afore-said shall not be called into question in any legal proceeding on the ground that they were not duly made by the Government of the province.

(2) "The Governor may make rules and orders for the more convenient transaction of business in his executive council and with his ministers, and every order made or act done in accordance with those rules and orders shall be treated as being the order or the act of the Government of the province.

"The Governor may also make rules and orders for regulating the relations between his executive

council and his ministers<sup>3</sup> for the purpose of the transaction of the business of the local Government :

“Provided that any rules or orders made for the purposes specified in this section which are repugnant to the provisions of any “other” rules made under this Act shall, to the extent of that repugnancy, but not otherwise, be void.”

### § 1. “Distinguishing orders and other proceedings ”

One fundamental principle of the Reforms is that the responsibility of both halves of the Provincial Executive Governments must be clear and distinct. This principle requires that it should be perfectly clear to all concerned by which of the two authorities—Councillors or Ministers—a particular order is issued. Both will have equal authority as orders of Government ; but the electorate will be able, if they wish to know whence any given order originates. In their First Reforms Despatch (para. 106) the Government of India express a strong desire “to see the two cases distinguished in some way (whether by a change of style, or by some marginal indication of the authority in possession of the case) that will enable the recipients to recognise which of the two halves of the Government is accountable for the decision.”

### § 2. “Relation between Governor’s Executive Council and his ministers.”

*See paragraphs 52-63 of the Functions Committee’s Report, pp. 280-286 in Part II of this book. See also paragraphs 219-221 of the M. C. R. and paragraphs 101-103 of the Government of India’s First Reforms Despatch, pp. 118-122 of Part II. of this book.*

The Joint Select Committee desire at this point to give a picture of the manner in which they think that, under this Bill, the Government of a province should be worked. There will be many matters of administrative business, as in all countries, which can be disposed of departmentally. But there will remain a large category of business, of the character which would naturally be the subject of Cabinet consultation. In regard to this category the Committee conceive that the habit should be carefully fostered of joint deliberation between the members of the executive



council and the ministers, sitting under the chairmanship of the Governor. There cannot be too much mutual advice and consultation on such subjects ; but the Committee attach the highest importance to the principle that, when once opinions have been freely exchanged and the last word has been said, there ought then to be no doubt whatever as to where the responsibility for the decision lies. Therefore, in the opinion of the Committee, after such consultation, and when it is clear that the decision lies within the jurisdiction of one or other half of the Government, that decision in respect of a reserved subject should be recorded separately by the executive council, and in respect of a transferred subject by the ministers, and all acts and proceedings of the government should state in definite terms on whom the responsibility for the decision rests. It will not always, however, be clear, otherwise than in a purely departmental and technical fashion, with whom the jurisdiction lies in the case of questions of common interest. In such cases it will be inevitable for the Governor to occupy the position of informal arbitrator between the two parts of his administration ; and it will equally be his duty to see that a decision arrived at one side of his government is followed by such consequential action on the other side as may be necessary to make the policy effective and homogeneous.

"The position of the Governor will thus be one of great responsibility and difficulty, and also of great opportunity and honour. He may have to hold the balance between divergent policies and different ideals, and to prevent discord and friction. It will also be for him to help with sympathy and courage the popular side of his government in their new responsibilities. He should never hesitate to point out to ministers what he thinks is the right course or to warn them if he thinks they are taking the wrong course. But if, after hearing all the arguments, ministers should decide not to adopt his advice, then, in the opinion of the Committee, the Governor should ordinarily allow ministers to have their way, fixing the responsibility upon them, even if it may subsequently be necessary for him to veto any particular piece of legislation. It is not possible but that in India, as in all other countries, mistakes will be made by ministers, acting with the approval of a majority of the legislative council, but there is no way of learning except through experience and by the realisation of responsibility.

"In the debates of the legislative council members of the executive council should act together and ministers should act together, but mem-

bers of the executive council and ministers should not oppose each other by speech or vote; members of the executive council should not be required to support either by speech or vote proposals of ministers of which they do not approve, nor should ministers be required to support by speech or vote proposals of the executive council of which they do not approve; they should be free to speak and vote for each other's proposals when they are in agreement with them. All other official members of the legislative council should be free to speak and vote as they choose." *J. S. C. R.*

**50.** (1) If any difference of opinion arises on any question brought before a meet-

Procedure in case of  
difference of opinion,  
[1909, s. 2 (2); 1912,  
s. 1 (1).]

ing of a governor's executive council, the Governor in Council shall

be bound by the opinion and decision of the majority of those present, and if they are equally divided the governor or other person presiding shall have a second or casting vote.

(2) Provided that, whenever any measure is proposed before a Governor in

[1793, ss. 47, 48; 1912,  
s. 1 (1); 1919, 2nd  
Sch., Pt. II.]

Council whereby the safety, tranquillity or interests of his "province,"

or of any part thereof, are or may be, in the judgment of the governor, essentially affected, and he is of opinion either that the measure proposed ought to be adopted and carried into execution, or that it ought to be suspended or rejected, and the majority present at a meeting of the council dissent from that opinion, the governor may, on his own authority and responsibility, by order in writing, adopt, suspend or reject the measure, in whole or in part.

(3) In every such case the governor and the members of the council present at the meeting shall mutually exchange written communications (to be recorded at large in their secret proceedings) stating the grounds of their respective opinions, and the order of the governor shall be signed by the governor and by those members.

(4) Nothing in this section shall empower a governor to do anything which he  
[1793, s. 49; 1912, s. 1 (1).] could not lawfully have done with the concurrence of his council.

**51.** If a governor is obliged to absent himself from any meeting of his executive council, by indisposition or any other cause, the vice-president, or, if he is absent, the senior member present at the meeting, shall preside thereat, with the like powers as the governor would have had if present :

Provided that if the governor is at the time resident at the place where the meeting is assembled, and is not prevented by indisposition from signing any act of Council made at the meeting, the act shall require his signature ; but, if he declines or refuses to sign it, the like provisions shall have effect as in cases where the governor, when present, dissents from the majority at a meeting of the Council.

[1800, s. 12; 1912, s. 1 (1); 1919, 2nd. Sch., Pt. III.]

**52.** “(1) The Governor of a Governor’s Province may, by notification, appoint ministers,<sup>1</sup> not being members of his executive council or other officials, to administer transferred subjects<sup>2</sup>, and any ministers so appointed shall hold office during his pleasure<sup>3</sup>.

Appointment of ministers and council secretaries. [1919, s. 4.]

“There may be paid to any minister so appointed in any Province the same salary<sup>4</sup> as is payable to a member of the executive council in that province, unless a smaller salary is provided by vote of the legislative council of the province.

“(2) No minister shall hold office for a longer period than six months, unless he is or becomes an elected member of the local legislature.

“(3) In relation to transferred subjects, the governor shall be guided by the advice of his ministers<sup>5</sup>, unless he sees sufficient cause to dissent from their opinion, in which case he may require action to be taken otherwise than in accordance with that advice : Provided that rules may be made under this Act for the temporary administration of a transferred subject where, in cases of emergency, owing to a vacancy, there is no minister in charge of the subject, by such authority and in such manner as may be prescribed by the rules.

“(4) The Governor of a Governor’s province may at his discretion appoint from among the non-official members of the local legislature council secretaries,<sup>6</sup>

who shall hold office during his pleasure, and discharge such duties in assisting members of the executive council and ministers, as he may assign to them.

There shall be paid to council secretaries so appointed such salary as may be provided by vote of the legislative council.

A council secretary shall cease to hold office if he ceases for more than six months to be a member of the legislative council."

### § 1. "Appoint ministers".

While the members of the Executive Councils would be appointed by His Majesty by warrant under the Royal Sign Manual, ministers, being advisers of the Governor, would necessarily be appointed by the Governor. The Ministers are to administer the transferred subjects · they must not be officials, and hold office during the Governor's pleasure, and not for the life-time of the Legislative Council as proposed in the Montagu-Chelmsford Report. (*M. C. R. para 218, Government of India's First Reforms Despatch, para 40; Functions Committee's Report, para 61*). This alteration, coupled with the power of the Councils to vote the supply for transferred subjects, involves making the Ministers directly responsible to the legislative councils. A Minister must be at the time of appointment, or become, within six months after his appointment as such, an elected member of the local legislature. This sub-section is modelled on corresponding provisions contained in the Dominion Constitutions (Australian Commonwealth Act, 1915, sec. 64; South Africa Act, 1909, sec. 14.) *See Notes under sec. 80B*

### § 2 "Transferred subjects".

*See Notes under Sec. 45A.*

### § 3. "During his pleasure"

A person holding office during pleasure can be removed without any reason for his removal being assigned [*See Notes under sec. 102 (1)*].

The Ministers hold office during the Governor's pleasure, and not for the life-time of the Legislative Council as originally proposed in the Montagu-Chelmsford Report.

#### § 4 "The same salary etc".

The Joint Select Committee recommend that the ministers salaries should be fixed by the legislative council that is the only way of making them really responsible to it. This section gives the legislative council liberty to pay the Ministers the same salaries as are paid to the members of the executive council—the maximum salary that may be paid to ministers cannot exceed the different maxima fixed by the second schedule to this Act for the executive councillors of the different provinces. The maximum salary of ministers will thus vary according to provinces. The Joint Select Committee suggest to the legislative councils that the Indian ministers of governors should be paid on a lower scale of remuneration than the European executive councillors on the same principle by which the Indian members of the council of India in London are paid a higher scale of remuneration than those members of the council domiciled in the United Kingdom. We think that, according to the same principle, the non-official Indian members of the governors' executive councils should receive a lower scale of remuneration than their European colleagues. If the principle is to be rigidly applied, the Indian ministers and the non-official Indian executive councillors should receive the same scale of remuneration.

#### § 5. "Guided by the advice of ministers"

"The Committee are of opinion that the ministers selected by the Governor to advise him on the transferred subjects should be elected members of the legislative council, enjoying its confidence and capable of leading it. A minister will have the option of resigning if his advice is not accepted by the Governor; and the Governor will have the ordinary constitutional right of dismissing a minister whose policy he believes to be either seriously at fault or out of accord with the views of the legislative council. In the last resort the Governor can always dissolve his legislative council and choose new ministers after a fresh election; but if this course is adopted the Committee hope that the Governor will find himself able to accept such views as his new ministers may press upon him regarding the issue which forced the dissolution. The Committee

are of opinion that in no province will there be need for less than two ministers, while in some provinces more will be required. In these circumstances they think that it should be recognised from the commencement that ministers may be expected to act in concert together. They probably would do so; and in the opinion of the Committee it is better that they should, and therefore that the fact should be recognised on the face of the Bill. They advise that the status of ministers should be similar to that of the members of the executive council, but that their salaries should be fixed by the legislative council."—*J. S. C. R.*

### § 6. "Council Secretaries"

This sub-section makes provision for the appointment, at the governor's discretion, of non-official—elected or nominated—members of the legislative council to fill a role somewhat similar to that of the Parliamentary Under-Secretary in England. In the course of the debate on the Bill in the House of Commons Lieutenant-Commander Kenworthy moved an amendment suggesting that these council secretaries should be chosen only from among the *elected non-official* members of the legislative council. In opposing this amendment Mr. Montagu said:—"It is intended to give an opportunity of familiarising young members of the legislative council with the difficulty of the work, but I do not think it would be wise to restrict the appointments to elected members. It cannot apply to officials, but in these early days there will be a certain number of members, non-official, who have been nominated, and they are equally entitled to a share of these posts. I think the preference will probably be given to elected members, but I do not want to shut out a nominated Indian prince, for example". (*P. D. H. C. Dec. 3, 1919.*) It is to be noticed that these council secretaries are to be appointed to assist both councillors and ministers; there is no statutory limit to the number of such council secretaries; apparently, however, one council secretary will be attached to each councillor and minister. Their salaries are to be voted by the legislature and they will, therefore be, like the ministers, responsible to the legislature. An important question arises in this connection—what will be the position of a member of the Executive Council if his Council Secretary who is his responsible proxy is censured by the Legislature or if a vote of want of confidence is passed against him? The council secretaries will, of course, form part of the Ministry and will resign with the ministers. ✓

Non-official members who will be appointed council secretaries will cease to be members of the legislative council (sec. 80B) : They must have to be re-elected or re-nominated within six-months of their appointment, if they are to continue to hold office as council secretaries. (*See notes under sec. 80B.*)

**52A.** “(1) The Governor-General in Council may,

Constitution of new provinces, etc., and provision as to backward tracts.

[1919, s. 15.]

after obtaining an expression of opinion from the local government and the local legislature affected, by notification, with the sanction of His Majesty previously signified by the Secretary of State in Council, constitute a new governor's province or place part of a governor's province under the administration of a deputy-governor to be appointed by the Governor-General, and may in any such case apply, with such modifications as appear necessary or desirable, all or any of the provisions of this Act relating to governors' provinces, or provinces under a lieutenant-governor or chief commissioner, to any such new province or part of a province.

“(2) The Governor-General in Council may declare any territory in British India to be a “backward tract,” and may, by notification, with such sanction as aforesaid, direct that this Act shall apply to that territory subject to such exceptions and modifications as may be prescribed in the notification. Where the Governor-General in Council has, by notification, directed as aforesaid, he may, by the same or subsequent notification, direct that any Act of the Indian legislature shall not apply to the territory in



question or any part thereof, or shall apply to the territory or any part thereof subject to such exceptions or modifications as the Governor-General thinks fit, or may authorise the governor in council to give similar directions as respects any Act of the local legislature."

In all the eight provinces are included certain backward areas where the people are primitive and there is as yet no material on which to found political institutions. "We do not think there will be any difficulty in demarcating them. They are generally the tracts mentioned in the schedules and appendices to the Scheduled Districts Act, 1874, with certain exceptions and possibly certain additions, which the Government of India must be invited to specify. The typically backward tracts should be excluded from the jurisdiction of the reformed provincial Governments and administered by the head of the province" (*M. C. R. para 199*).

"The (Joint Select) Committee have two observations to make on the working of this section. On the one hand, they do not think that any change in the boundaries of a province should be made without due consideration of the views of the legislative council of the province. On the other hand, they are of opinion that any clear request made by a majority of the members of a legislative council representing a distinctive racial or linguistic territorial unit for its constitution under this Clause as a sub-province or a separate province should be taken as a *prima facie* case on the strength of which a commission of inquiry might be appointed by the Secretary of State, and that it should not be a bar to the appointment of such a commission of inquiry that the majority of the legislative council of the province in question is opposed to the request of the minority representing such a distinctive territorial unit."—*J. S. C. R.*

## 52B. "The validity of any order made or action

Saving. [1919, s. 16(1) & (3).] taken after the commencement of the Government of India Act, 1919 by the Governor-General in Council or by a local government which would have been within the

powers of the Governor-General in Council or of such local government if that Act had not been passed, shall not be open to question in any legal proceedings on the ground that by reason of any provision of that Act or this Act or of any rule made by virtue of any such provision such order or action has ceased to be within the powers of the Governor-General in Council or of the government concerned.

“The validity of any order made or action taken by a governor in council, or by a governor acting with his ministers, shall not be open to question in any legal proceedings on the ground that such order or action relates or does not relate to a transferred subject, or relates to a transferred subject of which the minister is not in charge.”

*See Notes under sec. 45 A (2) (71).*

### **Lieutenant-Governorships and other Provinces.**

Lieutenant-Governor-  
ships.  
[1919 2nd Sch 1 Pt. II.]

governor.<sup>1</sup>

**53.** (1) The province of Burma, is, subject to the provisions of this Act, governed by a lieutenant

(2) The Governor-General in Council may, by notification, with the sanction of His Majesty previously signified by the Secretary of State in Council, constitute a new province under a lieutenant-governor.

## § 1. "Lieutenant-Governor."

Sec. 46 of the Act lays down that the *three* Presidencies of Fort William in Bengal, Fort St. George and Bombay and the *five* Provinces known as the United Provinces, the Punjab, Bihar and Orissa, the Central Provinces, and Assam shall each be governed, in relation to reserved subjects, by a *Governor in Council* and in relation to transferred subjects (save as otherwise provided by this Act) by the governor acting with ministers appointed under this Act. Burma is the only province which is left to be governed by a lieutenant-governor.

The Governor-General in Council may, by notification, with the sanction of His Majesty previously obtained and signified by the Secretary of State constitute a new province under a lieutenant-governor; and the lieutenant-governor is appointed by the Governor-General with the approval of His Majesty. See secs. 53 (2) and 54 (1).

*Qualifications of Lieutenant-Governors*—A lieutenant-governor must have been, at the time of his appointment, at least ten years in the service of the Crown in India [sec 54 (2).]

An executive council may be created in any province under a lieutenant-governor by the Governor-General in Council with the approval of the Secretary of State in Council. (Sec. 55.)

The points in which a lieutenant-governor differs from a governor may be summarised as follow—(1) he is styled only "His Honour" while a governor is addressed as "His Excellency", (2) he is appointed by the Viceroy from among the members of the Indian Civil Service, while a governor is appointed by the Crown not only from among distinguished members of the Indian Civil Service but also from members of the aristocracy in Great Britain; (3) he may or may not have an executive council to assist him, (4) his powers are more narrowly circumscribed and he is subject to more detailed interference by the Central Government; (5) he has no right to communicate directly with the Secretary of State.

See notes under sec. 73.

**54. (1)** A lieutenant-governor is appointed by the governor-general with the approval of His Majesty.

Lieutenant-Governors. [1835, s. 2, 1853, ss. 15, 16, 17; 1858, s. 29.]

(2) A lieutenant-governor must have been, at the time of his appointment, at least ten years in the service of the Crown in India.

[3] *Repealed by the Government of India Act, 1919, 2nd Sch., Pt. III.*

**55.** (1) The Governor-General in Council, with the approval of the Secretary of State in Council, may, by notification, create a council in any province under a lieutenant-governor, for the purpose of assisting the lieutenant-governor in the executive government of the province, and by such notification—

Power to create executive councils for lieutenant-governors.  
[1909, s. 3 (1), (2):  
1912, s. 2; 1919 2nd  
Sch., Pt III.]

- (a) make provision for determining what shall be the number (not exceeding four) and qualifications of the members of the Council; and
- (b) make provision for the appointment of temporary or acting members of the council during the absence of any member from illness or otherwise “and for supplying a vacancy until it is permanently filled” and for the procedure to be adopted in case of a difference of opinion between a lieutenant-governor and his council, and in the case of equality of votes, and in the case of a lieutenant-governor being obliged to absent himself from his council by indisposition or any other cause :

Provided that, before any such notification is published, a draft thereof shall be laid before each House of Parliament for not less than sixty days during the session of Parliament, and if, before the expiration of that time, an address is presented to His Majesty by either House of Parliament against the draft or any part thereof, no further proceedings shall be taken thereon without prejudice to the making of any new draft.

(2) Every notification under this section shall be laid before both Houses of Parliament as soon as may be after it is made.

(3) Every member<sup>1</sup> of a lieutenant-governor's executive council shall be appointed by the Governor-General, with the approval of His Majesty.

[1909, s. 7.]

[1909, s. 3(4).]

### § 1. "Every member"

*Difference between a member of a governor's executive council and that of a lieutenant-governor's council.* Sec. 47 lays down that the members of a governor's executive council shall be appointed by His Majesty by warrant under the Royal Sign Manual and the Secretary of State for India determines the number of members which is not to exceed four; whereas this section lays down that members of a lieutenant-governor's council shall be appointed by the Governor-General with the approval of His Majesty. This section further provides that the maximum number of members shall be four; but the number of members is to be determined by the Governor-General with the approval of the Secretary of State in Council.

**56.** A lieutenant-governor who has an executive council shall appoint a member of the council to be vice-president thereof, and that vice-president shall preside at meetings of the council in the absence of the lieutenant-governor.

**57.** A lieutenant-governor who has an executive council may, with the consent of the Governor-General in Council, make rules and orders for more convenient transaction of business in the Council, and every order made, or act done, in accordance with such rules and orders, shall be treated as being the order or the act of the lieutenant-governor in Council.

“An order made as aforesaid shall not be called into question in any legal proceedings on the ground that it was not duly made by the lieutenant-governor in Council.”

**58.** Each of the following provinces, namely, those known as the North-West Frontier Province, British Baluchistan, Delhi, Ajmer-Merwara, Coorg, and the Andaman and Nicobar Islands, is, subject to the provisions of this Act, administered by a chief commissioner<sup>1</sup>.

§ 1. “A chief commissioner.”

The chief commissioners have a lower status than the lieutenant governors. Their appointment is not specifically provided for by the Act

The territories under then charge are in theory "under the immediate authority and management of the Governor-General," who appoints chief commissioners at his discretion and delegates to them such powers as are necessary for the purposes of administration

So far, however, as the application of Indian enactments is concerned, chief commissioners are, by virtue of the definition contained in the General Clauses Act, 1897, and in sec 134 (cl. 4) of this Act placed on the footing of local governments. The North-West Frontier Province and British Baluchistan are charges of less magnitude, and the chief commissioners are at the same time the Governor-General's agents for dealing with tribes and territories outside British India. The four remaining provinces are small charges, not comparable in area with the rest, though the new province of Delhi has a special importance of its own. The Agent to the Governor-General in Rajputana and the Resident in Mysore are ex-officio Chief Commissioners of Ajmere-Merwara and Coorg respectively, while the Superintendent of the Penal Settlement of Port Blair, from which the islands derive their administrative importance, is Chief Commissioner of the Andaman and Nicobar islands

**59.** The Governor-General in Council may, with the approval of the Secretary of State, and by notification, take any part of British India under the immediate authority and management of the Governor-General in Council, and thereupon give all necessary orders and directions respecting the administration of that part, by placing it under a chief commissioner or by otherwise providing for its administration.

Power to place territory under authority of Governor-General in Council. [1854, s. 3.]

This section is to be used when it is desired to transfer the administration of a territory from a Governor in Council or a lieutenant-governor to a chief commissioner; The section need not be used, and is not ordinarily used, when the administration of a territory already under the administration of the Governor-General in Council is transferred from one local agency to another.

The transfer of territory under this section does not change the law in force in the territory (see below, sec. 61).

### Boundaries.

**60.** The Governor-General in Council may, by

Power to declare and alter boundaries of provinces. [1800, s. 1; 1833, s. 38; 1853, s. 17; 1861, c. 67, ss. 47, 49; 1865, c. 17, s. 4, 1912, s. 4 (2).]

notification, declare, appoint or alter the boundaries of any of the provinces into which British India is for the time being divided, and distribute the territories of British India

among the several provinces thereof in such manner as may seem expedient, subject to these qualifications, namely :—

(1) an entire district may not be transferred from one province to another without the previous sanction of the Crown, signified by the Secretary of State in Council; and

(2) any notification under this section may be disallowed by the Secretary of State in Council.

**61.** An alteration in pursuance of the foregoing

Saving as to laws. [1854, s. 3, prov., 1861, c. 67, s. 47, prov.; 1912, c. 3.]

provisions of the mode of administration of any part of British India, or of the boundaries of any part of British India, shall not affect the law for the time being in force in that part.

The power to take territory under the immediate authority of the Governor-General in Council (reproduced by sec. 59 above) is qualified by the proviso that no law or regulation in force at any such time as regards any such portions of territory shall be altered or repealed except by law or regulation made by the Governor-General of India in Council (17 & 18 Vict. c. 77, s. 3.)—*Ilbert*.



62. The Governor of Bengal in Council, the Governor of Madras in Council, and the Governor of Bombay in Council may, with the approval of the Secretary of State in Council, and by notification, extend the limits of the towns of Calcutta, Madras and Bombay, respectively ; and any Act of Parliament, letters patent, charter, law or usage conferring jurisdiction, power or authority within the limits of those towns respectively shall have effect within the limits as so extended.

Power to extend boundaries of presidency-towns. [1815, s. 1; 1912, s. 1 (2).]

## PART VI.

### THE INDIAN LEGISLATURE.

63. "Subject to the provisions of this Act, the Indian legislature<sup>1</sup> shall consist of the Governor-General and two chambers, namely, the Council of State and the Legislative Assembly.

"Except as otherwise provided<sup>2</sup> by or under this Act, a Bill shall not be deemed to have been passed by the Indian legislature unless it has been agreed to by both chambers, either without amendment or with such amendments only as may be agreed to by both chambers."

#### § 1. "The Indian legislature"

*Landmarks in the evolution of the Indian and local legislatures.*—(1) In British India it was originally the Executive Government itself that was empowered "to make regulations and ordinances," for the good govern-

ment of the factories or territories at first acquired in India, "so as they be not repugnant to the laws and customs of the United Kingdom." The laws (known as "Regulations" up to 1833) could be passed by the Governor-General in Council or by the Governors of Madras and Bombay in Council. Such regulations, however, were not to be valid or of any force until they were duly registered in the Supreme Court, with the consent and approbation of the Court of Directors (The earliest regulation bears date 17th April, 1780). An appeal from a regulation so registered and approved lay to the King in Council, but the pendency of such appeal was not allowed to hinder the immediate execution of the law. The Governments were bound to forward all such rules and regulations to England, power being reserved to the King to disapprove of them at any time within two years.

(2) By the Charter Act of 1833 the Governor-General's Council was augmented by a fourth or extraordinary member who was not entitled to sit or vote except at meetings for making laws and regulations. He was to be appointed by the Directors, subject to the approval of the Crown, from among persons, not servants of the company. The first such member was Thomas Babington Macaulay. The Governor-General in Council was empowered to make "Laws and Regulations" for the whole of India, withdrawing from the Governors of Madras and Bombay all legislative functions, but leaving to them the right only of proposing draft schemes. Acts (not "Regulations" as heretofore called) passed by the Governor-General in Council were liable to be disallowed by the Court of Directors and were also required to be laid before Parliament, but no registration in India was necessary. It was also expressly enacted that they were to have the force of Acts of Parliament.

(3) In 1853 the Council of the Governor-General was again remodelled by the admission of the fourth or legislative member as an ordinary member for all purposes; while six special members were added for the object of legislation only, *viz.*, one member from each of the four then existing presidencies or lieutenant-governorships and also the Chief Justice and one of the judges of the Supreme Court. Thus the first Indian Legislative Council as constituted under the Act of 1853 consisted only of 12 members, *viz.*, the Governor-General and the four members of his Council, the commander-in-chief, and six special members. The Governor-General was also empowered by this Act to appoint, with the sanction of the Court, two civilian members, but this power was never

exercised. From this time onwards the sittings of the legislative council were made public and their proceedings officially published.

(4) By the Indian Councils Act of 1861 the power of legislation was restored to the Presidencies of Madras and Bombay, and a legislative council was appointed for Bengal, while the Governor-General in Council retained legislative authority over the whole of India. For legislative purposes the Governor-General's Council consisted of five ordinary members, the commander-in-chief as extraordinary member, and the Governor or Lieutenant-Governor of the Province in which the Council happened to meet, together with from 6 to 12 members nominated for a period of two years by the Governor-General. Of these last not less than one-half was to be non-official persons, and in practice some of them were always Indians. The extent of the powers of the Legislative Council was thus defined—

“For all persons, whether British or Native, foreigners or others, and for all courts of justice whatever, and for all places and things whatever within the said territories and for all servants of the Government of India within the dominions of princes and states in alliance with Her Majesty”

Certain subjects were expressly reserved for Parliament, including the several statutes regulating the constitution of the Indian Government, any future statute affecting India, any statute for raising money in England, the Mutiny Act, and the unwritten laws and constitution of England, so far as regards allegiance and sovereignty. No measure could be introduced without the sanction of the Governor-General if it affected the public debt or revenues, the religious usages of the people, military discipline or foreign relations. No law was to be valid until the Governor-General had given his express assent to it; and an ultimate power of signifying disallowance was reserved to the Crown. In cases of emergency the Governor-General, apart from the Legislative Council, could make “ordinances for the peace and good government” of the country, which had the force of laws for six months. Local legislatures were constituted for Madras and Bombay, in addition to the ordinary councils, consisting in each presidency of the Advocate-General, together with from four to eight other persons, of whom one-half were to be non-official nominated by the Governors. Besides the subjects forbidden to the Governor-General's Council, these local legislatures were not to take into consideration proposals affecting general taxation, the currency, the post office and telegraphs, the penal code, patents and copyrights. The assent

of the Governor-General as well as that of the Governor was necessary to give validity to any law. A similar local legislature was directed to be constituted for the lower Provinces of Bengal and power was given to constitute Legislative Councils for what was known as the North-Western Provinces and for the Punjab and for any other lieutenant-governorship that might be formed in the future. Such were the chief provisions of the Indian Councils Act of 1861.

(5) The next landmark in the evolution of the Indian legislature was the passage of the Indian Councils Act of 1892. The changes introduced by this Act were, broadly speaking, three in number. The first was the concession of the privilege of financial criticism in both the supreme and provincial legislative councils; the second was the concession of the right of asking questions; the third made an increase in the size of the legislative councils and changes in the method of nomination—changes which fore-shadowed the introduction of the elective element into the Indian legislatures.

(6) We come next to the constitutional reforms of 1909 associated with the names of Lords Morley and Minto (*See "Documents" Vol. I*). Under the Minto-Morley scheme the Legislative Council of the Governor-General consisted, in addition to the seven members of his Executive Council, of 60 members, of whom 27 were elected and 33 nominated making a total of 69, inclusive of the Governor-General, and the Head of the Province in which the Council assembled. Many of the provincial legislatures were given non-official majorities. Power was given to move resolutions on matters of general public interest and to ask supplementary questions.

(7) Finally, we come to the Montagu-Chelmsford Reforms of 1919 under which the constitution and functions of the Indian and provincial legislatures have undergone further development and change. The main objects of reforming the constitution of the Indian Legislature are—

- (1) to provide in the case of the Legislative Assembly a body substantially larger and of a more representative character than the hitherto existing Governor-General's Legislative Council, with a majority of elected members. (*M. C. R. para 273.*)

- (2) to provide a real revising body—a true Second Chamber.

Sections 63 to 64 provide for an Indian Legislature consisting of the Governor-General and two Chambers, namely, the Council of State and the Legislative Assembly, constituted in accordance with the proposals

of the Montagu-Chelmsford Report (*paras 273 to 278, see Documents I, pp 549 to 554*), subject to modifications recommended by the Franchise Committee (*Franchise Committee's Report, paras 31 to 33 and 39 and 40, see Part II, pp 211 to 213, and pp. 217-218*) and by the Parliamentary Joint Select Committee

The Montagu-Chelmsford Report proposed that the strength of the Legislative Council to be known henceforth as the Legislative Assembly of India should be raised to a total strength of about 100 members. Two thirds of this total should be returned by election one third to be nominated by the Governor-General and of this third not less than a third again should be non-officials representing minorities or special interests such as European and Indian Commerce. The normal duration of an Assembly was proposed to be three years. The Report also proposed the creation of a second chamber known as the Council of State for the special object of enabling the Government of India "to obtain its will in essential matters" necessary for the good government of the land. The proposal was that the Council of State should take part in ordinary legislative business and should be the final legislative authority in matters which government regarded as essential. The object was to make assent by both bodies the normal condition of legislation ; but to establish the principle that in the case of legislation certified by the Governor-General as essential to the interests of peace, order and good government, the will of the Council of State was to prevail. The proposals of the Montagu-Chelmsford Report regarding the constitution of the Council of State may be thus summarised—

The Council of State will be composed of 50 members exclusive of the Governor-General who would be President. Not more than 25 members including the members of the Executive Council would be officials, and four would be non-officials nominated by the Governor-General. There would be 21 elected members returned by non-official members of the provincial legislative councils, each council returning two members with the exception of Burma, the Central Provinces and Assam which would return one member each. The remaining 6 elected members are to supplement the representation of the Muhammadans and the landed classes and to provide for the representation of the chambers of commerce. The Council of State is to possess senatorial character and the qualifications of candidates for election should be so framed as to secure men of the status and position worthy of the dignity of a revising

chamber. Five years would be the normal duration of a Council of State.

The above proposals of the M C Report underwent considerable revision at the hands of the Franchise Committee and the Parliamentary Joint Select Committee. This will be evident from a perusal of the notes under the succeeding sections below. But we should refer here to one great change made by the Joint Select Committee, the Committee do not accept the device propounded in the Montagu-Chelmsford Report, of "carrying government measures through the Council of State without reference to the Legislative Assembly, in cases where the latter body cannot be got to assent to a law which the Governor-General considers essential. Under the scheme which the Committee propose to substitute for this procedure, there is no necessity to retain the Council of State as an organ for government legislation. It should, therefore, be reconstituted from the commencement as a true Second Chamber. They recommend that it should consist of sixty members, of whom not more than twenty should be official members. The Franchise Committee advise that the non official members should be elected by the same group of persons as elect the members of the Legislative Assembly and in the same constituencies. This is a plan which the Committee could, in no circumstances, accept. They hope and believe that a different system of election for the Council of State can be devised by the time the constitution embodied in this Bill comes into operation, and they recommend that the Government of India be enjoined forthwith to make suggestions accordingly, to which effect can be given without delaying the inauguration of the new constitution."—*J. S. C. R*

The Indian Legislature is thus a truly bicameral legislature and has been brought into line with the Dominion Legislatures.

[*N. B*—It should be noted that there is no statutory provision for the payment of any salary or allowance to members of either House of the Indian Legislature or of the local legislatures. Every member of the British House of Commons (except those forming the Ministry) gets an annual salary of £400. In the Australian Commonwealth each Senator and each member of the House of Representatives receives an allowance of £400 a year. In the Dominion of Canada each member of the Senate and the House of Commons is entitled to an allowance of ten dollars per day for his attendance at Parliament during a session not exceeding thirty days in

duration. For a session lasting longer than thirty days each member is paid 1000 dollars.

The system of the payment of members of the Legislature has been the subject of prolonged controversy in British Colonies during the last fifty years and it is now generally regarded as an essential condition of democratic government, especially in young communities. It is in force in most of the responsible government colonies, though in several instances it was not carried without bitter opposition and memorable contests.]

## § 2. "Except as otherwise provided."

Normally, a Bill cannot become an Act of the Indian Legislature unless it has been assented to by the Legislative Assembly, the Council of State and the Governor-General. Sub-section 3 of sec. 67 provides for removing deadlocks, should any arise, between the two legislative chambers. If any Bill which has been passed by one chamber is not, within six months after the passage of the Bill by that chamber, passed by the other chamber either without amendments or with such amendments as may be agreed to by both chambers, the Governor-General may, in his discretion, refer the matter, for decision, to a joint sitting of both chambers.

Section 67B provides for cases in which the Governor-General may use his "certifying power" to secure the passage of Bills which are essential for "the safety, tranquillity or interests of British India or any part thereof." This is the "exceptional" circumstance under which the normal procedure for the passage of Bills gives way to a special procedure which is described in sec. 67B below.—*See M. C. R. paras. 279-282, Documents I, pp. 554-557*

**63A.** "(1) The Council of State<sup>1</sup> shall consist of not more than sixty members nominated or elected<sup>2</sup> in accordance with rules made under this Act, of whom not more than twenty shall be official members.

"(2) The Governor-General shall have power to appoint, from among the members of the Council of

State, a president<sup>2</sup> and other persons to preside<sup>3</sup> in such circumstances as he may direct.

“(3) The Governor-General shall have the right of addressing the Council of State, and may for that purpose require the attendance of its members.”

### § 1 “Council of State”

*Composition of Council of State.*—The Council of State consists of (1) thirty three elected members; (2) twenty seven members nominated by Governor-General of whom not more than twenty may be officials and one is a person nominated as the result of an election held in Bihar.

The thirty three elected members are elected from the different constituencies as follow —

	Non-Mahomedan.	Mahomedan.	European Com- merce	Sikh	General.
Madras ... ..	4	1	...	...	...
Bombay ... ..	3	3	...	...	...
Bengal ... ..	3	2	1	...	...
United Provinces ... ..	3	2	...	...	...
The Punjab ... ..	1	.	...	1	...
Bihar and Orissa .. ..	2*	1	...	...	...
Central Provinces ... ..	...	...	...	...	1
Burmah ... ..	...	...	1	...	1
TOTAL ... ..	16	9	2	1	2=30

\* The Bihar and Orissa Non-Mahomedan constituency is entitled to elect a third member to the second, fourth and succeeding alternate Councils of State according to the following scheme :—



*List of Constituencies entitled to representation by rotation.*

			Number of members.
East Punjab—Mahomedan	...	}	2
West Punjab—Mahomedan	...		
Bihar and Orissa—Non-Mahomedan	..		
Assam—Mahomedan	..	}	1
Assam—Non-Mahomedan	..		
			<hr/> 3

*See paras 30-42 of the Franchise Committee's Report pp 217-219 of Pt. II of this book*

## § 2 "The Governor-General to appoint a president"

The original proposal in the draft Bill was that the Governor-General, when present, was to preside at meetings of the Council of State and was to appoint from among the members of the Council of State a vice-president. Subsequently however, it has been enacted that the Governor-General is not to be the President of the Council of State, though he will have the right of addressing it—he is to appoint, from among *members* of the Council of State, a president to preside at meetings of the Council of State. Now *members*, as such, include, (1) such members of the Governor-General's Executive Council as may be nominated as members of the Council of State, (2) other nominated officials or non-officials, and (3) elected non-official members. The President of the Council of State may therefore be either a member of the Governor-General's Executive Council, or any other nominated official or a nominated non-official or an elected non-official. As a matter of fact Mr. A. P. Muddiman has been appointed to be the first President of the Council of State and he is the first nominated official appointed to the post by the Government of India.

By the Canadian Constitution the Governor-General is authorised from time to time to appoint a Senator to be Speaker of the Senate and to remove him and appoint another in his stead. The Constitution of the Australian Commonwealth vests in the Senate itself the power of choosing and removing its Presidents. The President is not elected for any particular term, but he will cease to hold office (1) if he ceases to be a Senator; (2) if he is removed from office by a vote of the Senate; (3) if he resigns his office.

The duties of President are those usually assigned to and exercised by the presiding officers of legislative bodies among these may be—to maintain order and decorum, to enforce the rules of debate; to recognise a member who wishes to speak and thus to give him the floor, to put the question before the House: to ascertain and declare the will of the House, either on the voices, or as the result of a division, to appoint tellers to take a division; to supervise the officers of the House and see that the votes and the proceedings are properly recorded, so far as those duties are not otherwise regulated by the standing orders of the House passed in conformity with the constitution; and finally, to assist in the enforcement of the law of the Constitution

### 3. "Other persons to preside."

Provision has to be made for the absence, for any reason, of the appointed President of the Council of State from meetings of the Council of State. there might also arise special circumstances when somebody, other than the appointed President, may have to preside. This section seems to provide for the appointment of a Vice-President or a Deputy President of the Council of State

#### 63B. "(1) The Legislative Assembly shall consist

Legislative Assembly.  
[1919, s. 19.]

of members nominated or elected in accordance with rules made under this Act.

"(2) The total number of members of the Legislative Assembly<sup>1</sup> shall be one hundred and forty. The number of non-elected members shall be forty, of whom twenty-six shall be official members. The number of elected members shall be one hundred :

"Provided that rules made under this Act may provide for increasing the number of members of the Legislative Assembly<sup>2</sup> as fixed by this section, and may vary the proportion which the classes of members bear one to another, so, however, that at least five-sevenths of the members of the Legislative Assembly shall be

elected members, and at least one-third of the other members shall be non-official members.

“(3) The Governor-General shall have the right of addressing the Legislative Assembly, and may for that purpose require the attendance of its members.”

### 1 “Number of members of the Legislative Assembly”

According to sub-section (2) of sec 63(B) the total number of members of the Legislative Assembly is to be 140 of whom 100 are to be elected members, 26 are to be nominated official members, and 14 are to be nominated non-official members. The proviso to this sub-section, however, enacts that rules made under this Act may provide for increasing the number of members of the Legislative Assembly and may vary the proportion which the classes of members bear one to another, so, however, that at least five-sevenths of the members of the Assembly shall be elected members and at least  $\frac{2}{7}$  of them shall be non-official members.

The rules made under this Act provide for 144 members of the Legislative Assembly of whom 103 are elected members, 26 are nominated officials and 15 are nominated non-officials (including one nominated as the result of an election held in Beal). *Vide Government of India Notification No 767 F dated Simla, July 27, 1920, published in the Gazette of India, July 29, 1920*

See paras 31 to 38 of the *Franchise Committee's Report*, pp. 211-217 of Pt II of this book

*List of Constituencies entitled to representations in the Legislative Assembly*

PROVINCE.			Non-Mahomedan.	Mahomedan	European Commerce	Sikh.	Landholders	Indian Commerce	Non-European.
Madras	...	...	10	3	1	...	1	1	...
Bombay	...	...	7	2	2	...	...	1	...
Bengal	...	...	6	6	3	...	1	...	...

*List of Constituencies entitled to representations in the Legislative Assembly—continued.*

PROVINCE.	Non-Mahomedan.	Mahomedan	European Commerce	Sikh.	Landholders	Indian Commerce	Non-European
United Provinces ...	8	6	1	.	1	.	.
The Punjab ...	3	6	.	2	1	..	.
Bihar and Orissa ...	8	3	...	...	1	..	...
Central Provinces ...	3	1	..	...	1	..	...
Assam ...	2	1	1	...	..	...	.
Burmah ...	...	.	1	...	...	...	1
Delhi ...	...	General	1	...	...	...	..

*List of Constituencies entitled to representation in rotation*

Bombay—Mahomedans ..	{ Province of Sindh ... }	—1
	{ The Northern Division ... }	
Bombay—Mahomedans ...	{ The Central Division .. }	—1
	{ The Southern Division ... }	
Bombay—Landholders ...	{ The Southern Division .. }	—1
	{ The Province of Sindh ... }	
Bombay—Indian Commerce	{ Bombay Mill Owner's Association }	—1
	{ Ahmedabad Mill Owner's Association }	
Bengal—Indian Commerce ...	{ Bengal National Chamber of Commerce .. }	—1
	{ Marwari Association .. }	
	{ Bengal Mahajan Sabha ... }	

**63C.**—“(1) There shall be a president of the Legislative Assembly,<sup>1</sup> who shall, until the expiration of four years from the first meeting thereof, be a

President of Legislative Assembly. [1919, s. 20.]

person appointed by the Governor-General, and shall thereafter be a member of the Assembly elected by the Assembly and approved by the Governor-General :

“Provided that, if at the expiration of such period of four years the Assembly is in session, the president then in office shall continue in office until the end of the current session, and the first election of a president shall take place at the commencement of the ensuing session.

“(2) There shall be a deputy-president of the Legislative Assembly<sup>2</sup> who shall preside at meetings of the Assembly in the absence of the president, and who shall be a member of the Assembly elected by the Assembly and approved by the Governor-General.

“(3) The appointed president shall hold office until the date of the election of a president under this section, but he may resign his office by writing under his hand addressed to the Governor-General, or may be removed from office by order of the Governor-General, and any vacancy occurring before the expiration of his term of office shall be filled by a similar appointment for the remainder of such term.

“(4) An elected president and a deputy-president<sup>3</sup> shall cease to hold office if they cease to be members of the Assembly. They may resign office by writing under their hands addressed to the Governor-General, and may be removed from office by a vote of the Assembly with the concurrence of the Governor-General.

“(5) A president and deputy-president shall receive such salaries as may be determined, in the case of an appointed president by the Governor-General, and in the case of an elected president and a deputy-president by Act of the Indian legislature.”

### § 1. “A President of the Legislative Assembly”

The Joint Select Committee think that “the President of the Legislative Assembly should for four years be a person appointed by the Governor-General. He should be qualified by experience in the House of Commons and a knowledge of Parliamentary procedure, precedents, and conventions. He should be the guide and adviser of the Presidents of the provincial councils, and he should be chosen with a view to the influence which it is hoped he would have on the whole history of parliamentary procedure in India. He should be paid an adequate salary”—*J S C R*

The Governor-General has already appointed a distinguished member of the House of Commons to be the first President of the Indian Legislative Assembly

At the expiration of four years after the first meeting of the Assembly it will proceed to elect, from among its members, a president who will have to be approved by the Governor-General. The President is to be elected from among the *members* of the Legislative Assembly; an official member of the Governor-Generals Executive Council, or a nominated official or non-official or an elected non-official *may* thus be the President of the Assembly, if he is elected by it; but, as there will be a non-official elected majority, it is *likely* that the elected President will be one of the elected non-official members.

### 2. “A Deputy President of the Legislative Assembly.”

The Deputy President will be elected by the Assembly at the very beginning of its first session

### 3. “An elected president and a deputy-president”

Both the elected president and the elected deputy-president may be removed from office by a vote of the Assembly with the concurrence of

the Governor-General, then salaries are to be determined by an Act of the Indian Legislature.

Duration and sessions  
of Legislative Assembly  
and Council of State  
[1919, s. 21]

**63D.**—“(1) Every Council of State shall continue for five years,<sup>1</sup> and every Legislative Assembly for three years<sup>2</sup>, from its first meeting :

“Provided that—

- (a) either chamber of the legislature may be sooner dissolved<sup>3</sup> by the Governor-General : and
- (b) any such period may be extended<sup>4</sup> by the Governor-General if in special circumstances he so thinks fit ; and
- (c) after the dissolution of either chamber the Governor-General shall appoint a date not more than six months,<sup>5</sup> or, with the sanction of the Secretary of State, not more than nine months, after the date of dissolution for the next session<sup>6</sup> of that chamber.

“(2) The Governor-General may appoint such times<sup>7</sup> and places for holding the sessions of either chamber of the Indian legislature as he thinks fit, and may also from time to time, by notification or otherwise, prorogue<sup>8</sup> such sessions.

“(3) Any meeting of either chamber of the Indian legislature may be adjourned<sup>9</sup> by the person presiding.

“(4) All questions in either chamber shall be determined by a majority of votes<sup>10</sup> of members present

other than the presiding member, who shall, however, have and exercise a casting vote<sup>11</sup> in the case of an equality of votes.

“(5) The powers of either chamber of the Indian legislature may be exercised notwithstanding any vacancy<sup>12</sup> in the chamber.”

**§ 1 “Every Council of State to continue  
for five years”**

In Canada the Senators, appointed by the Governor-General, hold their seats for life. In the Australian Commonwealth the Senators are chosen for a term of six years. The Indian Senators—the members of the Council of State—are chosen for a term of five years. The length of the legal term of a member of the Council of State is thus greater than the potential term of a member of the Legislative Assembly.

**§ 2. “Every Legislative Assembly to continue  
for three years.”**

Every Canadian House of Commons continues for five years from the day of the return of the Writs for choosing the House (subject to be sooner dissolved by the Governor-General) and no longer. In the Australian Commonwealth every House of Representatives continues for three years from the first meeting of the House, and no longer, but may be sooner dissolved by the Governor-General. The Indian Legislative Assembly, like its Australian prototype, also continues for three years from the first meeting, but may be sooner dissolved or may be continued for a further period (in special circumstances) by the Governor-General.

**§ 3. “May be sooner dissolved”**

“A dissolution is the civil death of the Parliament, and is effected in two ways.—(1) By the Sovereign's will, expressed either in person or by representation. (2) By length of time, *i.e.*, seven (now five) years. By the 30 & 31 Vict. c. 102 s. 51 it is provided that Parliament shall not be determined or dissolved by the demise of the Crown.”—*Wharton*.

The Council of State and the Legislative Assembly may continue in existence for five and three years respectively but either of them may be “sooner dissolved” by the Governor-General.



Regarding this power to dissolve either chamber of the Indian Legislature, the Government of India make the following remarks in their *First Reforms Dispatch*—"The proposal that the Governor-General should have power to dissolve either the Assembly or the Council of State has been less universally approved. The weight of opinion is in favour of the proposal, but there is considerable feeling that the power is one which should be sparingly used, and several influential bodies have urged that it should be accompanied by some provision for the summoning of a new legislature within a specified period. We have no fear that the power will be abused, but as in the case of the provincial councils if the object in view cannot be secured by making the election writs returnable by a specified date, we recommend that a dissolution should be accompanied by a provision requiring that a new chamber or chambers shall be summoned within a specified period.'

As the executive government of India is not responsible to either House of the Indian Legislature in the sense in which the popular part of the Provincial Executive (the Ministers) is responsible to the provincial legislatures, it is difficult to conjecture the circumstances under which a dissolution of either House will take place.

#### § 4 "Period may be extended"

Sub-section (1) of sec. 63D fixes the life of the Council of State at five years, and of the Indian Legislative Assembly at three years, but provides that the Governor-General may dissolve either Chamber at any time, and that he may in special circumstances also extend the life of either Chamber. This latter provision has been added in order to give the Governor-General a reserve power, which would only be used in exceptional circumstances, to defer the holding of a General Election.

#### § 5 "A date not more than six months"

*See Notes on "Dissolution" above*

#### § 6 'Session'

"Session" means the sittings of the House, which are continued, day by day, by adjournment, until the House is prorogued or dissolved.

#### § 7. "May appoint such times"

It will be noticed that the section states that the Governor-General may perform these acts and there is no reference to his so acting by the

advice of the Executive Council *For the other powers which the Governor-General may exercise alone see notes under sec 34 ante*

### § 8. "Prorogue."

Prorogation is the continuance of the Legislature from one session to another, as an adjournment is a continuance of the session from day to day. Prorogation puts an end to the session, and according to Parliamentary practice, quashes any Bills which are begun and not perfected. According to the practice of the British Parliament, such Bills must be resumed *de novo* (if at all) in a subsequent session, as if they had not previously been introduced (*May, Parl. Prac. 10th ed. p. 43*). The Houses may however, by standing orders, provide for the resumption of such Bills, upon motion, at the stage at which they were interrupted. A prorogation may be effected by commission, but the usual course is by proclamation.

"Both Houses are necessarily prorogued at the same time, it not being a prorogation of the House of Lords or Commons, but of Parliament. The session is never understood to be at an end until a prorogation, though, unless some Act be passed, or some judgment given in Parliament, it is in truth no session at all" (*Tomlins*).

"The Crown may bring the session to an end by prorogation, which has the effect of quashing all proceedings except impeachments and appeals before the House of Lords. Parliament is prorogued by the sovereign in person in the House of Lords, or by commission, it may also be prorogued by proclamation from the day for which it was summoned or to which it had been previously prorogued." (*Encyclopædia, Laws of England, IX., p. 401.*)

The practice of the Mother of Parliaments will no doubt largely influence the practice of the Indian Legislature.

### § 9. "Adjourned."

Adjournment means "a putting off to another time or place, a continuation of a meeting from one day to another."—(*Wharton*).

### § 10 "A majority of votes of members present."

All questions in either chamber are to be decided by an *ordinary* majority of votes of *members present*: that is to say, the minimum votes necessary for the affirmative decision of any question must be more than half the quorum fixed by Rules made under this Act. An *absolute*

majority *etc.* a majority of votes of the *total legal number of members*— is not necessary for such decision.

### § 11. "Casting vote".

*See notes under sec. 41*

### § 12 "Notwithstanding any vacancy".

Vacancies may occur by reason of absence of members from India, inability to attend to duty, death, acceptance of office, or resignation duly accepted, or otherwise. The powers of either Chamber of the Indian Legislature may be exercised so long as the number of its members does not fall below the quorum fixed by rules made under sec. 67 (1)

**63E.** "(1) An official<sup>1</sup> shall not be qualified for election as a member of either chamber of the Indian Legislature, and, if any non-official<sup>1</sup> member of either chamber accepts office<sup>2</sup> in the service of the Crown in India, his seat in that chamber shall become vacant.

"(2) If an elected member<sup>3</sup> of either chamber of the Indian Legislature becomes a member of the other chamber, his seat in such first-mentioned chamber shall thereupon become vacant.

"(3) If any person is elected a member of both chambers<sup>4</sup> of the Indian Legislature, he shall, before he takes his seat in either chamber, signify in writing the chamber of which he desires to be a member, and thereupon his seat in the other chamber shall become vacant.

"(4) Every member of the Governor-General's Executive Council<sup>5</sup> shall be nominated as a member of one chamber of the Indian Legislature, and shall

have the right of attending in and addressing the other chamber, but shall not be a member of both chambers."

### § 1. "An official"—"Any non-official".

Sec 134 of this Act thus defines the expressions "official" and "non-official"—

"The expressions 'official' and 'non-official', where used in relation to any person, mean respectively a person who is or is not in the civil or military service of the Crown in India."

"Provided that rules under this Act may provide for the holders of such offices as may be specified in the rules, not being treated for the purposes of this Act, or any of them, as officials."

The proviso enabling exceptions to be made in respect to the holders of certain offices is intended to meet a difficulty with regard to certain appointments, such as that of Government Pleader, which, while carrying no position which can reasonably be held to constitute a disqualification for election as a member of a Legislative Council, may, unless specially excepted, be regarded as bringing their holders within the definition of "officials"

In exercise of the powers conferred by the above section and sec. 129A, the Governor-General in Council, with the sanction of the Secretary of State in Council, has made the following rules—

1 (a) These rules may be called the Non-official (Definition) Rules.

(b) They shall come into force on a date to be appointed by the Governor-General in Council with the approval of the Secretary of State in Council and different dates may be appointed for different parts of India.

2. The holder of any office in the civil or military service of the Crown, if the office is one which does not involve both of the following incidents, namely, that the incumbent

(a) is a whole-time servant of Government, and

(b) is remunerated either by salary or fees,

shall not be treated as an official for any of the purposes of the Government of India Act.

3. If any question arises, whether any officer is or is not a whole-time servant of Government for the purposes of Rule 2, the decision of the Governor-General in Council shall be final.

*Vide Government of India Notification No. 614 G. dated Simla, the*

9th September 1920, published in the Gazette of India of the 11th September, 1920

Under rule 2) above all holders of honorary offices under the Government and of offices which do not involve whole-time employment will be treated as non-official for all purposes of the Act and will therefore be eligible for election to any Legislative body. Whether a particular office does or does not involve whole-time employment is a question of fact to be decided in case of doubt by the Governor-General in Council.

### § 2 "If any non-official member accepts office".

If any member of the House of Commons accepts office, his seat becomes vacant: similarly under this section, if any non-official member—elected or nominated, of either Chamber of the Indian Legislature accepts office—civil or military—in the service of the Crown in India, his seat in that Chamber becomes vacant, and a fresh selection will have to be made by his constituency. If, however, the office that is accepted by him is an honorary one or does not involve whole-time employment, he may continue to be a member (See Notes on "official" and "non-official" above). The wording of the section, however, is not clear to show whether *re-election* is necessary under such circumstances.

### § 3 "If an elected member etc."

Sub-sections (2) and (3) provide for two different sets of circumstances. Sub-section (2) apparently means that if a person, after he has been elected a member of either chamber of the Indian Legislature and has taken his seat in it, is *subsequently elected* or nominated (the word "*becomes*" implying either election or nomination) a member of the other chamber, his seat in such first-mentioned chamber thereupon becomes vacant.

### § 4 "If any person is elected etc".

This sub-section implies that if a person is *simultaneously* elected a member of both chambers he must, *before he takes his seat in either chamber*, signify in writing the chamber of which he desires to be a member and thereupon his seat in the other chamber becomes vacant.

### § 5 "Every member of the Governor-General's Executive Council etc"

In some countries the ministers—although not members of both chambers of the Legislature—have the right of attending in and

addressing them. A similar privilege is given by this sub-section to members of the Governor-General's Executive Council. They will be members of only one of the two chambers, but they will have the right of being present in and addressing the other chamber and of explaining their policy and action in regard to matters under discussion.

Supplementary provisions as to composition of Legislative Assembly and Council of State [1919, s. 23.]

**64.** (1) Subject to the provisions of this Act, provision may be made by rules under this Act as to—

- (a) the term of office of nominated members of the Council of State and the Legislative Assembly<sup>1</sup>, and the manner of filling casual vacancies<sup>2</sup> occurring by reason of absence of members from India, inability to attend to duty, death, acceptance of office, or resignation duly accepted, or otherwise; and
- (b) the conditions under which and the manner in which persons may be nominated as members of the Council of State or the Legislative Assembly; and
- (c) the qualification of electors<sup>3</sup>, the constitution of constituencies<sup>4</sup>, and the method of election for the Council of State and the Legislative Assembly (including the number of members to be elected by communal and other electorates<sup>5</sup>) and any matters incidental or ancillary thereto; and

(*d*) the qualifications for being or for being nominated or elected as members of the Council of State or the Legislative Assembly<sup>6</sup>; and

(*e*) the final decision of doubts or disputes as to the validity of an election<sup>7</sup>; and

(*f*) the manner in which the rules are to be carried into effect.

(2) Subject to any such rules, any person who is a ruler or subject of any State in India may be nominated as a member of the Council of State or the Legislative Assembly.<sup>8</sup>

### § 1. "Term of office of members .. Legislative Assembly.

Nominated non-official members hold office for the duration of the Council of State or the Legislative Assembly to which they are nominated

Nominated official members hold office for the duration of the Council of State or the Legislative Assembly to which they are nominated, or for such shorter period as the Governor-General may, at the time of nomination, determine

### § 2. "Manner of filling casual vacancies "

1. If any person, having been elected or nominated, subsequently becomes subject to any of the disabilities, or fails to make the oath or affirmation prescribed by the rules, within such time as the Governor-General considers reasonable, the Governor-General shall, by notification in the Gazette, declare his seat to be vacant

2. When a vacancy occurs in the case of an elected member by reason of his election being declared void or his seat being declared vacant, or by reason of absence from India, inability to attend to duty, death, acceptance of office, or resignation duly accepted, the Governor-General shall, by notification in the Gazette, call upon the constituency concerned to elect a person for the purpose of filling the vacancy within such time as may be prescribed by such notification.

If a vacancy occurs in the case of a nominated member the Governor-General shall nominate to the vacancy a person having the necessary qualifications

### § 3 "Qualification of Electors."

1. Every person shall be entitled to have his name registered on the electoral roll of a constituency who has the qualifications prescribed for an elector of that constituency and who is not subject to any of the disqualifications hereinafter set out, namely :—

(a) is not a British subject, or

(b) is a female, or

(c) has been adjudged by a competent court to be of unsound mind; or

(d) is under 21 years of age

Provided that, if the Ruler of a State in India or any subject of such a State is not disqualified for registration on the electoral roll of a constituency of the Legislative Council of a province, such Ruler or subject shall not by reason of not being a British subject be disqualified for registration on the electoral roll of any constituency of the Council of State or of the Legislative Assembly in that province.

Provided further that, if a resolution is passed by the Council of State or the Legislative Assembly after not less than one month's notice has been given of an intention to move such a resolution, recommending that the sex disqualification for registration should be removed either in respect of women generally or any class of women, the Governor-General in Council shall make regulations providing that woman or a class of women, as the case may be, shall not be disqualified for registration by reason only of their sex, if they are not so disqualified for registration as electors for the Legislative Council of their province.

Provided further that no person shall be entitled to have his name registered on the electoral roll of more than one general constituency.

(2) If any person is convicted of an offence under Chapter IX—A of the Indian Penal Code punishable with imprisonment for a term exceeding six months or is, after an inquiry by Commissioners appointed under any rules for the time being in force regarding elections to a legislative body constituted under the Act, reported as guilty of a corrupt practice as specified in Part I, or in the Paragraphs 1, 2 or 3 of Part II of Schedule IV, his name, if on the electoral roll, shall be removed therefrom and



shall not be registered thereon for a period of five years from the date of the conviction or the report, as the case may be, or if not on the electoral roll, shall not be so registered for a like period, and if any person is reported by any such Commissioners as guilty of any other corrupt practice, his name, if on the electoral roll, shall be removed therefrom and shall not be registered thereon for a period of three years from the date of the report or, if not on the electoral roll, shall not be so registered for a like period.

Provided that the Governor General in Council may direct that the name of any person to whom this sub-rule applies shall be registered on the electoral roll.

The qualifications of an elector for a general constituency shall be such qualifications based on——

- (i) residence, or residence and community, and
- (ii) (a) the holding of land, or
  - (b) assessment to or payment of income-tax, or
  - (c) past or present membership of a legislative body, or
  - (d) past or present tenure of office on a local authority, or
  - (e) past or present university distinction, or
  - (f) the tenure of office in a co-operative banking society, or
  - (g) the holding of a title conferred for literary merit, as are specified in Schedule II in the case of that constituency.

The qualifications of an elector for a special constituency shall be the qualifications specified in Schedule II in the case of that constituency.  
*See the Gazette of India Extraordinary July 29, 1920*

#### § 4. "Constitution of Constituencies"

*See Notes under sec. 63 ante.*

*See also Gazette of India Extraordinary, July 29, 1920.*

#### § 5 "Communal and other electorates."

*See paras 15—23 of the Franchise Committee's Report, pp. 198—206 of Pt. II of this book.*

#### § 6. "Qualification for being nominated or elected as a member .....Legislative Assembly."

(1) A person shall not be eligible for election or nomination as a member of the Council of State or of the Legislative Assembly if such person—

- (a) is not a British subject ; or
- (b) is a female ; or
- (c) is already a member of any legislative body constituted under the Act ; or
- (d) having been a legal practitioner has been dismissed or is under suspension from practising as such by order of any competent court ; or
- (e) has been adjudged by a competent court to be of unsound mind ; or
- (f) is under 25 years of age ; or
- (g) is an undischarged insolvent ; or
- (h) being a discharged insolvent has not obtained from the court a certificate that his insolvency was caused by misfortune without any misconduct on his part .

Provided that, if the Ruler of a State in India or any subject of such a State is not ineligible for election disqualified for nomination to the Legislative Council of Province, such Ruler or subject shall not by reason of not being a British subject be ineligible for election disqualified for nomination to the Council of State or the Legislative Assembly by any constituency in that Province. Provided further that the disqualification mentioned in clause (d) may be removed by an order of the Governor-General in Council in this behalf.

(2) A person against whom a conviction by a criminal court involving a sentence of transportation or imprisonment for a period of more than six months is subsisting, shall, unless the offence of which he was convicted has been pardoned, not be eligible for election nomination for five years from the date of the expiration of the sentence.

(3) If any person is convicted of an offence under Chapter IX-A of the Indian Penal Code punishable with imprisonment for a term exceeding six months or is, after an inquiry by Commissioners appointed under any rules for the time being in force regarding elections to a legislative body constituted under the Act, reported as guilty of a corrupt practice as specified in Part I, or in paragraphs 1, 2 or 3 of Part II, of Schedule IV, such person shall not be eligible for election nomination for five years from the date of such conviction or of the finding of the Commissioners, as the case may be ; and a person reported by any such Commissioners to be guilty

of any other corrupt practice shall be similarly disqualified for three years from such date.

(4) If any person has been a candidate or an election agent at an election to any legislative body constituted under the Act and has failed to lodge any prescribed return of election expenses or has lodged a return which is found, either by Commissioners holding an inquiry into the election or by a Magistrate in a judicial proceeding, to be false in any material particular, such person shall not be eligible for <sup>election</sup><sub>nomination</sub> for five years from the date of such election. Provided that any disqualification mentioned in sub-rule (3) or sub-rule (4) of this rule may be removed by an order of the Governor-General in Council in that behalf.

No person shall be eligible for election as a member of the Council of State to represent—

- (a) a general constituency situated in the United Provinces or in the province of Assam, unless his name is entered on the electoral roll of a general constituency situated within the same province.
- (b) a general constituency situated in the province of Madras, Bombay, Bengal, the Punjab or Bihar and Orissa unless his name is entered on the electoral roll of the constituency or of another constituency situated in the same province and of the same communal description as that by which he desires to be elected,
- (c) a general constituency situated in the Central Provinces or in the province of Burma unless his name is entered on the electoral roll of the constituency.

No person shall be eligible for election as a member of the Council of State to represent special constituency unless his name is entered on the electoral roll of the constituency.

For the purposes of these rules—

- (1) "special constituency" means a European commerce constituency,
- (2) "general constituency" means any constituency specified in Schedule I other than a European Commerce constituency.

**§ 7. "The final decision of doubts and disputes as to the validity of an Election."**

1. In this Part \* and in Schedule IV, unless there is anything repugnant in the subject or context,—

(a) "agent" includes an election agent and any person who is held by Commissioners to have acted as an agent in connection with an election with the knowledge or consent of the candidate ;

(b) "candidate" means a person who has been nominated as a candidate at any election or who claims that he has been so nominated or that his nomination has been improperly refused, and includes a person who, when an election is in contemplation, holds himself out as a prospective candidate at such election, provided that he is subsequently nominated as a candidate at such election ; and

(c) "returned candidate" means a candidate whose name has been published under these rules as duly elected.

2. No election shall be called in question except by an election petition presented in accordance with the provisions of this Part.

3. An election petition may be presented to the Governor-General by any candidate or elector against any returned candidate within fourteen days from the date on which the result of the election has been published.

4. The petition shall contain a statement in concise form of the material facts on which the petitioner relies and the particulars of any corrupt practice which he alleges and shall, where necessary, be divided into paragraphs numbered consecutively. It shall be signed by the petitioner and verified in the manner prescribed for the verification of pleadings in the Code of Civil Procedure, 1908.

5. The petitioner may, if he so desires, in addition to calling in question the election of the returned candidate, claim a declaration that he himself or any other candidate has been duly elected ; in which case he shall join as respondents to his petition all other candidates who were nominated at the election.

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\* Extract from the Rules published in the Gazette of India Extraordinary, July 29, 1920

6. At the time of presentation of the petition, the petitioner shall deposit with it the sum of one thousand rupees in cash or in Government Promissory Notes of equal value at the market rate of the day as security for the costs of the same

7. (1) If the provisions of rule 6 are not complied with, the Governor-General shall dismiss the petition

(2) Upon compliance with the provisions of rule 6 —

(a) the Governor-General shall appoint as Commissioners for the trial of the petition three persons who are or have been, or are eligible to be appointed, Judges of a High Court within the meaning of section 101 (3) of the Act, and shall appoint one of them to be the President, and thereafter all applications and proceedings in connection therewith shall be dealt with and held by such Commissioners ,

(b) the President of the Commission so constituted shall, as soon as may be, cause a copy of the petition to be served on each respondent and to be published in the Gazette, and may call on the petitioner to execute a bond in such amount and with such sureties as he may require for the payment of any further costs. At any time within fourteen days after such publication, any other candidate shall be entitled to be joined as a respondent on giving security in a like amount and procuring the execution of a like bond.

(3) When in respect of an election in a constituency more petitions than one are presented, the Governor-General shall refer all such petitions to the same Commissioners, who may at their discretion inquire into the petitions either in one or in more proceedings as they shall think fit.

8. Every election petition shall be inquired into by the Commissioners, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908, to the trial of suits . provided that it shall only be necessary for the Commissioners to make a memorandum of the substance of the evidence of any witness examined by them.

9. The inquiry shall be held at such place as the Governor-General may appoint . provided that the Commissioners may in their discretion sit for any part of the enquiry at any other place in province in which the constituency in question is situated, and may depute any one of their number to take evidence at any place in that province.

10 (1) No election petition shall be withdrawn without the leave of the Commissioners.

(2) If there are more petitioners than one no application to withdraw a petition shall be made except with the consent of all the petitioners.

(3) When an application for withdrawal is made, notice thereof fixing a date for the hearing of the application shall be given to all other parties to the petition and shall be published in the Gazette

(4) No application for withdrawal shall be granted if the Commissioners are of opinion that such application has been induced by any bargain or consideration which the Commissioners consider ought not to be allowed.

(5) If the application is granted——

(a) the petitioner shall be ordered to pay the costs of the respondent theretofore incurred or such portion thereof as the Commissioners may think fit,

(b) such withdrawal shall be reported to the Governor-General, who shall publish notice thereof in the Gazette, and

(c) any person who might himself have been a petitioner may, within seven days of such publication, apply to be substituted as petitioner in place of the party withdrawing, and, upon compliance with the conditions of rule 6 as to security, shall be entitled to be so substituted and to continue the proceedings upon such terms as the Commissioners may think fit.

11. (1) An election petition shall abate only on the death of a sole petitioner or of the survivor of several petitioners.

(2) Such abatement shall be reported to the Governor-General, who shall publish notice thereof in the Gazette.

(3) Any person who might himself have been a petitioner may, within seven days of such publication, apply to be substituted as petitioner, and, upon compliance with the conditions of rule 6 as to security, shall be entitled to be so substituted and to continue the proceedings upon such terms as the Commissioners may think fit.

12 If before the conclusion of the trial of an election petition the respondent dies or gives notice that he does not intend to oppose the petition, the Commissioners shall cause notice of such event to be published in the Gazette, and thereupon any person who might have been a petitioner may, within seven days of such publication, apply to be substituted for such respondent to oppose the petition, and shall be

entitled to continue the proceedings upon such terms as the Commissioners may think fit.

13. Where at an inquiry into an election petition any candidate, other than the returned candidate, claims the seat for himself, the returned candidate or any other party may give evidence to prove that the election of such candidate would have been void if he had been the returned candidate and a petition had been presented complaining of his election.

14. When at an inquiry into an election petition the Commissioners so order, the Advocate General or some person acting under his instructions shall attend and take such part therein as they may direct.

*Explanation.*—The expression "Advocate General" includes also a Government Advocate, or, where there is no Advocate General or Government Advocate, such other officer as the local Government may appoint in this behalf.

15. (1) Save as hereinafter provided in this rule, if in the opinion of the Commissioners—

- (a) the election of a returned candidate has been procured or induced, or the result of the election has been materially affected, by a corrupt practice, or
- (b) any corrupt practice specified in Part I of Schedule IV has been committed, or
- (c) the result of the election has been materially affected by any irregularity in respect of a nomination paper, or by the improper reception or refusal of a vote, or by any non-compliance with the provisions of the Act or the rules or regulations made thereunder, or by any mistake in the use of any form annexed thereto,

the election of the returned candidate shall be void.

(2) If the Commissioners report that a returned candidate has been guilty by an agent (other than his election agent) of any corrupt practice specified in Part I of Schedule IV which does not amount to any form of bribery other than treating as hereinafter explained or to the procuring or abetment of personation, and if the Commissioners further report that the candidate has satisfied them that—

- (a) no corrupt practice was committed at such election by the candidate or his election agent, and the corrupt practices mentioned in the report were committed contrary to the

orders and without the sanction or connivance of such candidate or his election agent, and

- (b) such candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at such election, and
- (c) the corrupt practices mentioned in the said report were of a trivial, unimportant and limited character, and
- (d) in all other respects the election was free from any corrupt practice on the part of such candidate or any of his agents,

then the Commissioners may find that the election of such candidate is not void.

*Explanation.*—For the purposes of this sub-rule “treating” means the incurring in whole or in part by any person of the expense of giving or providing any food, drink, entertainment or provision to any person with the object, directly or indirectly, of inducing him or any other person to vote or refrain from voting or as a reward for having voted or refrained from voting.

16. (1) At the conclusion of the inquiry, the Commissioners shall report whether the returned candidate, or any other party to the petition who has under the provisions of these rules claimed the seat, has been duly elected, and in so reporting shall have regard to the provisions of rule 42.

(2) The report shall be in writing and shall be signed by all the Commissioners. The Commissioners shall forthwith forward their report to the Governor-General who on receipt thereof, shall issue orders in accordance with the report and publish the report in the Gazette, and the orders of the Governor-General shall be final

17. If either in their report or upon any other matter there is a difference of opinion among the Commissioners, the opinion of the majority shall prevail, and their report shall be expressed in the terms of the views of the majority.

18. Where any charge is made in an election petition of any corrupt practice, the Commissioners shall record in their report—

- (a) a finding whether a corrupt practice has or has not been proved to have been committed by any candidate or his agent, or with the connivance of any candidate or his agent, and the nature of such corrupt practice, and



(b) the names of all persons (if any) who have been proved at the inquiry to have been guilty of any corrupt practice and the nature of such corrupt practice with any such recommendations as they may desire to make for the exemption of any such persons from any disqualifications they may have incurred in this connection under these rules.

### § 8. "Any person who is a ruler. . . Legislative Assembly".

Provided that, if the Ruler of a State in India or any subject of such a State is not disqualified ineligible for nomination or election to the Legislative Council of a province, such Ruler or subject shall not by reason of not being a British subject, be disqualified for nomination or election to the Legislative Assembly or Council of State to represent that province, and no subject of such a State shall for that reason be disqualified ineligible for nomination or election to represent the province

Legislative powers. **65.** (1) The "Indian Legislature" has power to make laws—

[1861, c 67, s. 22 ;  
1919, 2nd Sch., Pt. II.]

(a) for all persons, for all courts, and for all places and things, within British India<sup>1</sup>; and

(b) for all subjects of His Majesty and servants of the Crown within other parts of India<sup>2</sup>; and

[1861, c 67, s. 22 ;  
1865, c. 17, ss. 1, 2.]

(c) for all native Indian subjects of His Majesty, without and beyond as well as within British India;<sup>3</sup> and

[1869, c. 98, s. 1.]

(d) for the government of officers, soldiers, "airmen" and followers in His Majesty's Indian forces, wherever they are serving, in so far as they are not subject to the Army Act, "or the Air Force Act"; and

[1813, s. 96; 1833, s. 73; 1861, c. 67 s. 22, 5th proviso; 1881, c. 58, s. 180 (2) (a) (b); 44 and 45 Vict., c. 58. 19:9, 2nd Sch Pt. III.]

(e) for all persons employed or serving in or  
 [1884, s. 2.] belonging to the Royal Indian  
 Marine Service; and

(f) for repealing or altering any laws<sup>1</sup> which  
 [1861, c. 67, s. 22; for the time being are in force in  
 1892, s. 3] any part of British India or apply  
 to persons for whom the "Indian Legislature" has  
 power to make laws.

(2) Provided that the "Indian Legislature" has  
 [1861, c. 67, s. 22, not, unless expressly so authorised  
 1st proviso.] by Act of Parliament, power to  
 make any law repealing or affecting—

(i) any Act of Parliament passed after the year  
 [1861, c. 67, s. 22, one thousand eight hundred and  
 1st, 5th and 6th pro- sixty and extending to British India  
 visos. 44 and 45 Vict., (including the Army Act, "the Air  
 c. 58; 1919, 2nd Sch, Force Act" and any Act amending  
 Pt. III.] the same); or

(ii) any Act of Parliament enabling the Secre-  
 [1861, c. 67, s. 22, tary of State in Council to raise  
 4th proviso.] money in the United Kingdom for  
 the Government of India;

and has not power to make any law affecting the  
 authority of Parliament, or any part of the unwritten  
 [1861, c. 67, s. 22, laws or constitution of the United  
 7th proviso.] Kingdom of Great Britain and Ire-  
 land whereon may depend in any degree the alle-  
 giance of any person to the Crown of the United

Kingdom", or affecting the sovereignty or dominion of the Crown over any part of British India.

(3) The "Indian Legislature" has not power,<sup>5</sup>

[1833, s. 46, 1861, c.  
104, ss. 11, 16; 1884,  
s. 5, 1914, s. 3]

without the previous approval of the Secretary of State in Council, to make any law empowering any court, other than a high court, to sentence to the punishment of death any of His Majesty's subjects born in Europe, or the children of such subjects, or abolishing any high court<sup>7</sup>.

### § 1. "For all persons, for all Courts etc."

The wording of this clause seems to give to the Indian Legislature concurrent power to legislate not only for the whole of India, but for the Provinces as well. Sub-section 2 (1) of sec. 67 is more explicit on this point with the previous sanction of the Governor-General any measure for repealing or amending any Act of a Local Legislature may be introduced into the Indian Legislature. No precise line of demarcation has been drawn between the legislative spheres of the Local and Indian Legislatures. Although there is no formal limitation of the general powers of legislation conferred by this section, it is, however, contemplated, that under the new reformed constitution of India, the Indian Legislature will abstain from legislating on Provincial subjects, except where those subjects are declared by the Rules of Classification under sec. 45A of this Act to be subject to Indian Legislation. (*Functions Committee's Report, para 33, p. 246 of Pt. II of this book*)

### § 2. "Within other parts of India."

This section empowers the Indian Legislature to enact laws not only for all persons in "British India", but in other parts of "India" as well *i.e.* the jurisdiction of the Indian Legislature—so far as His Majesty's subjects and servants are concerned—extends beyond British India, into the Indian States. Apart from the authority given to the Indian Legislature by this section, there is a wider power to legislate for persons and things outside British India under the Foreign Jurisdiction Act.

### § 3. "Without and beyond as well as within British India"

The jurisdiction of the Indian Legislature extends to native Indian subjects of His Majesty, in whatever part of the world they may be at any time

### § 4 "Repealing or altering any laws etc."

This clause empowers the Indian Legislature to repeal or alter any Act of any Local Legislature in British India. *See notes under sec 67 (2) u*

Although this section does not impose any formal limitation of the general powers of legislation of the Indian Legislature, it is contemplated that the Indian Legislature will abstain from legislating on provincial subjects, except where those subjects are declared by the Rules of Classification made under sec 45A to be subject to Indian Legislation (*Functions Report, para 33*)

### § 5. "The Indian Legislature has not power etc"

*The Non-Sovereign Character of the Indian Legislature* - The Indian Legislatures are, according to constitutional theory, strictly non-sovereign law-making bodies. The general characteristics of such bodies are, according to Professor Dicey,—first, the existence of laws affecting their constitution which such bodies must obey and cannot change, hence, secondly, the formation of a marked distinction between ordinary laws and fundamental laws; and lastly, the existence of a person or persons, judicial or otherwise, having authority to pronounce upon the validity or constitutionality of laws passed by such law-making bodies. Each of these three characteristics is noticeable with reference to the Indian Legislatures, Imperial and Provincial. Although the Indian Legislature can pass laws as important as any Act passed by the British Parliament, the authority of the Legislature as regards law-making is completely subordinate to, and dependent upon, the Acts of Parliament which constitute the Legislatures. The legislative powers of the Indian Legislatures arise from definite Parliamentary enactments (such as the statutes of 1853, 1861, 1892, 1909 and 1919) which have all now been consolidated into one statute *viz*, the Government of India Act. This new Act might be termed the Constituent and Fundamental Law of the Government of India. In the next place, the Indian Legislatures are also non-sovereign in that they are bound by a large number of Regula-

tions and Rules which the Executive Government of India is empowered to frame under the constituent law mentioned above, which cannot be changed by the Indian legislative bodies themselves, but which can be changed only by the Executive Government or by the superior power of the Imperial Parliament. Again the powers of the Legislatures as to law-making are also specifically restricted by rules as well as by statutes. Thus the Indian Legislature "has not power to make any law affecting the authority of Parliament or any part of the unwritten laws or constitution of the United Kingdom of Great Britain and Ireland whereon may depend in any degree the allegiance of any person to the Crown of the United Kingdom or affecting the sovereignty or dominion of the Crown over any part of British India."

Lastly, the Courts in British India are constitutionally vested with the power of pronouncing upon the validity or constitutionality of laws passed by the Indian Legislatures. The Courts treat Acts passed by the Indian Legislature precisely in the same way in which the King's Bench Division treats the bye-laws of a railway company. No Judge in India or elsewhere ever issues a decree which declares invalid, annuls, or makes void a law or regulation made by the Indian Legislature. But when any particular case comes before the Courts, whether Civil or Criminal, in which the rights or liabilities of any party are affected by the legislation of the Indian Legislature, the Courts may have to consider and determine with a view to the particular case whether such legislation was or was not within the legal powers of the Legislature, which is of course the same thing as adjudicating as regards the particular case in hand upon the validity or constitutionality of the legislation in question.

\* Thus in the case *Queen vs. Burah* (3 I L R Calcutta Series, p. 63) "the High Court held a particular legislative enactment of the Governor-General in Council to be in excess of the authority given to him by the Imperial Parliament and therefore invalid, and on this ground entertained an appeal from two prisoners which, if the enactment had been valid, the Court would admittedly have been incompetent to entertain. The Privy Council, it is true, held on appeal that the particular enactment was within the legal powers of the Council and therefore valid, but the duty of the High Court of Calcutta to consider whether the legislation of the Governor-General was or was not constitutional, was not questioned by the Privy Council. To look at the same thing from another point of view, the Courts in India treat the legislation of the Governor-General in Council

in a way utterly different from that in which any English Court can treat the Acts of the Imperial Parliament. An Indian tribunal may be called upon to say that an Act passed by the Governor-General need not be obeyed because it is unconstitutional or void. No British Court can give judgment, or ever does give judgment, that an Act of Parliament need not be obeyed because it is unconstitutional. Here, in short, we have the essential difference between subordinate and sovereign legislative power". (*Anson*).

The net effect of the powers and restrictions relating to the Indian Legislature cannot be better described than in the words of Lord Selbourne in the case of *Queen v Burah*, referred to above. He says—"The Indian Legislature has powers expressly limited by the Act of the Imperial Parliament which created it, and it can, of course, do nothing beyond these limits which circumscribe these powers. But when acting within these limits, it is not in any sense an agent or delegate of the Imperial Parliament, but has, and was intended to have, plenary powers of legislation, as large and of the same nature, as those of Parliament itself. The established courts of justice, when a question arises whether the prescribed limits have been exceeded, must of necessity determine that question. and the only way in which they can properly do so is by looking to the terms of the instrument, by which affirmatively the legislative powers were created, and by which negatively they are restricted. If what has been done is legislation within the general scope of the affirmative words which give the power, and if it violates no express condition or restriction by which that power is limited (in which would of course be included any Act of the Imperial Parliament at variance with it), it is not for any court of justice to enquire further or to enlarge constructively" those conditions and restrictions."

If we examine closely we shall find that the powers of the Indian Legislature are actually more extensive than those of the Federal Parliament of Canada or any Dominion Parliament. As Professor Keith points out—"They cover not only the power to make laws for all persons, courts, places, and things within British India, which are the powers of a Dominion Parliament in a Unitary Dominion and which are, of course, much in excess of the powers of any Federal Parliament, but they include authority with regard to all British subjects and servants of the Crown in other parts of India, and all native Indian subjects of His Majesty within and beyond British India, the regulation of His Majesty's Indian forces,

wherever serving, in so far as they are not subject to the Army Act—a power conferred by the Imperial Army Act also on colonial legislatures—the government of persons in the Royal Indian Marine Service within the limits of Indian waters, defined in Sec. 66 as the high seas between the Cape of Good Hope on the west and the Straits of Magellan on the east—a power only conceded in 1911 to Dominion Parliament as regards Dominion naval forces—and, most remarkable of all, a power to repeal any Act of the Imperial Parliament passed prior to 1861, except any Act enabling the Secretary of State in Council to raise money in the United Kingdom. To Acts of Parliament after 1860 the doctrine of repeal does not apply and the Council may not pass a law affecting the authority of Parliament, any part of the unwritten law or constitution of the United Kingdom dealing with allegiance or the Sovereignty or dominion of the Crown over any part of British India. All these restrictions, however, apply equally to any Dominion Parliament, and the only specific restraint on the Council peculiar to itself is that it may not, without the previous approval of the Secretary of State in Council, empower any but High Court to sentence to death a European British subject, or the child of such a subject or abolish a High Court.

“Through the curious and somewhat inadvertent grant of the power to alter any Act of Parliament prior to 1861 the Indian Legislative Council has some odd powers: it could repeal the provisions requiring obedience to the orders of the Secretary of State, the limitations on the power of the Governor-General in Council or local Governments to make war or treaties, the provisions regarding the jurisdiction, powers and authorities of the High Courts etc.”

### § 6. “Whereon may depend.....United Kingdom”

These words are somewhat indefinite, and a wide meaning was attributed to them by Mr. Justice Norman in the case of *In the matter of Ameer Khan*, 6 Bengal Law Reports, 392, 456, 459. In this case, which turned on the validity of an arrest under Regulation III of 1818, the powers of the Indian Legislature under successive charters and enactments were fully discussed.—*Ilbert*.

*Allegiance* means “the natural, lawful and faithful obedience which every subject owes to the Supreme Magistrate” (*Wharton*.)

## § 7 'Abolishing any High Court'

It appears from this section that, although the Indian Legislature may not create a High Court, yet it can abolish any High Court with the previous approval of the Secretary of State in Council.

**66.** (1) A law made under this Act for the  
Laws for the Royal  
 Indian Marine Service.  
 [1884, ss. 2, proviso,  
 (a) 3] Royal Indian Marine Service shall  
 not apply to any offence unless  
 the vessel to which the offender  
 belongs is at the time of the commission of the  
 offence within the limits of Indian waters, that is  
 to say, the high seas between the Cape of Good Hope  
 on the West and the Straits of Magellan on the East,  
 and any territorial waters between those limits.

(2) The punishments imposed by any such law  
[1884, c. 2, prov. (b).] for offences shall be similar in  
 character to, and not in excess of,  
 the punishments which may, at the time of making  
 the law, be imposed for similar offences under the  
 Acts relating to His Majesty's Navy, except that, in  
 the case of persons other than Europeans or Ameri-  
 cans, imprisonment for any term not exceeding  
 fourteen years, or transportation for life or any less  
 term, may be substituted for penal servitude.

**67.** (1) Provision may be made by rules under  
Business at meetings.  
 [1919, s. 24 (2).] this Act for regulating the course of  
 business and the preservation of  
 order in the chambers of Indian legislature and as to  
 the persons to preside at the meetings of the Legisla-  
 tive Assembly in the absence of the president and the



deputy-president; and the rules may provide for the number of members required to constitute a quorum, and for prohibiting or regulating the asking of questions<sup>1</sup> on, and the discussion of, any subject specified in the rules.

(2) It shall not be lawful without the previous sanction of the Governor-General,  
 [1861, c. 67, s. 19, prov.] to introduce at any meeting of “either Chamber of the Indian legislature” any measure affecting—

(a) the public debt or public revenues<sup>2</sup> of India, or imposing any charge on the revenues of India; or

(b) the religion or religious rites<sup>3</sup> and usages of any class of British subjects in India; or

(c) the discipline or maintenance of any part of His Majesty’s military, naval  
 [1919, sch. II. Pt. III.] “or air” forces, or

(d) the relations of the Government with foreign princes or states<sup>4</sup>.

“or any measure—

(i) regulating any provincial subject<sup>5</sup> or any part of a provincial subject, which  
 [1919, s. 27.] has not been declared by rules under this Act to be subject to legislation by the Indian legislature; or

(ii) repealing or amending any Act of a local legislature<sup>6</sup>; or

- (iii) repealing or amending any Act or ordinance made by the Governor-General.

“(2A) Where in either chamber of the Indian legislature any Bill has been introduced, or is proposed to be introduced, or any amendment to a Bill is moved, or proposed to be moved, the Governor-General may certify<sup>7</sup> that the Bill, or any clause of it, or the amendment, affects the safety or tranquillity of British India, or any part thereof, and may direct that no proceedings, or that no further proceedings, shall be taken by the chamber in relation to the Bill, clause, or amendment; and effect shall be given to such direction.”

“(3) If any Bill which has been passed by one chamber is not, within six months  
[1919, Sec. 24 (3)—  
(7).] after the passage of the Bill by that chamber, passed by the other chamber either without amendments or with such amendments as may be agreed to by the two chambers, the Governor-General may in his discretion refer the matter for decision to a joint sitting of both chambers<sup>8</sup>: Provided that standing orders made under this section may provide for meetings of members of both chambers appointed for the purpose, in order to discuss any difference of opinion which has arisen between the two chambers.

“(4) Without prejudice to the powers of the Governor-General under section sixty-eight of this Act, the Governor-General may, where a Bill has been passed by both chambers of the Indian legisla-

ture, return the Bill for reconsideration<sup>9</sup> by either chamber.

“(5) Rules made for the purpose of this section may contain such general and supplemental provisions as appear necessary for the purpose of giving full effect to this section.

“(6) Standing orders may be made providing for the conduct of business and the procedure to be followed in either chamber of the Indian legislature in so far as these matters are not provided for by rules made under this Act. The first standing orders shall be made by the Governor-General in Council, but may, with the consent of the Governor-General, be altered by the chamber to which they relate.

“Any standing order made as aforesaid which is repugnant to the provisions of any rules made under this Act shall, to the extent of that repugnancy but not otherwise, be void.

“(7) Subject to the rules and standing orders affecting the chamber, there shall be freedom of speech in both chambers<sup>10</sup> of the Indian legislature. No person shall be liable to any proceedings in any court by reason of his speech or vote in either chamber, or by reason of anything contained in any official report of the proceedings of either chamber.”

### § 1. “Rules regulating the asking of questions etc.”

Rules under this section have not yet been published but the general principles on which the Rules will be framed can be gathered from para 286 of the M. C. Report (*Documents I, p. 558.*) and para. 118 of

the Government of India's First Reforms Despatch (printed in Part II of this book pp. 135-136)

## § 2 "Public debt," "Public revenues."

*See notes under sec. 20 ant:*

## § 3. "The religion or religious rites etc."

We should recall, in this connection, the famous words of the Royal Proclamation of 1858—

"Firmly relying Ourselves on the truth of Christianity, and acknowledging with gratitude the solace of Religion, We disclaim alike the Right and the desire to impose our Convictions on any of Our Subjects. We declare it to be Our Royal Will and Pleasure that none be in anywise favoured, none molested or disquieted by reason of their Religious Faith or Observances; but that all shall alike enjoy the equal and impartial protection of the Law and We do strictly charge and enjoin all those who may be in authority under Us, that they abstain from all interference with the Religious Belief or Worship of any of Our Subjects, on pain of Our highest Displeasure."

## § 4. "The relations of the Government with foreign princes or States."

*See notes under sec. 44 pp. 184-188.*

## § 5 "Any measure regulating any provincial subject."

Among provincial subjects there are some which are subject to legislation by the Indian Legislature (*see pp. 253-263, Part II of this book*): there are others which are not so subject. If any measure affecting the latter class of provincial subjects is to be introduced at any meeting of either chamber of the Indian Legislature, the previous sanction of the Governor-General must have to be obtained.

## § 6. "Repealing or amending any act of a local legislature"

The essential feature of the system of legislation in British India is that save for certain powers entrusted to the Indian Legislature by this section, "the Indian Legislature as regards British India, and each of the

provincial legislatures as regards its own province, have in theory concurrent jurisdiction over the whole legislative field" Thus, according to this section, the Indian Legislature, with the previous consent of the Governor-General, is competent to repeal or amend any Act of a local legislature similarly according to sec. 80A (3) (1) the local legislature may with the previous sanction of the Governor-General, pass a law altering or repealing any provision of an Act of the Indian Legislature made after the commencement of the Government of India Act, 1919.

### § 7 "The Governor-General may certify etc."

This sub-section is supplementary to section 67B it empowers the Governor-General to use his power of certificate in preventing the passage of a law affecting the safety or tranquillity of British India or any part thereof. Sec. 67B, on the other hand, enables the Governor-General to secure the passage of any law which he deems "essential for the safety, tranquillity or interests of British India or any part thereof" The original proposal was to empower the Governor-General to certify that the passage of a Bill was essential for the safety, tranquillity or interests of British India, or that a state of emergency had arisen, and on such certificate being given, the Council of State was to be empowered, without obtaining the concurrence of the Legislative Assembly, to pass laws which were meant to have effect as if passed by both Chambers

For reasons which prompted their rejection of the process of certification by a Governor to a grand committee in a province, the Joint Select Committee "are opposed to the proposals in the Bill which would have enabled the Governor-General to refer to the Council of State, and to obtain by virtue of his official majority in that body, any legislation which the lower chamber refuses to accept, but which he regards as essential to the discharge of his duties. The Committee have no hesitation in accepting the view that the Governor-General in Council should in all circumstances be fully empowered to secure legislation which is required for the discharge of his responsibilities; but they think it is unworthy that such responsibility should be concealed through the action of a Council of State specially devised in its composition to secure the necessary powers. They believe that in such a case it would add strength to the Government of India to act before the world on its own responsibility. In order, however, that Parliament may be fully apprised of the

position and of the considerations which led to this exceptional procedure, they advise that all Acts passed in this manner should be laid before Parliament, who would naturally consider the opinion of the standing committee already referred to.”—*J. C. S. R*

### § 8 “Joint sitting of both Chambers.”

This sub-section provides for the settlement of deadlocks between the two chambers of the Indian Legislature. If one chamber passes a Bill, and the other chamber refuses to pass it within six months without any amendments, or with such amendments as may be agreed to by both chambers, the Governor-General is empowered to refer the Bill to a joint sitting of both chambers.

The joint sitting is an old contrivance in Parliamentary Government. It is founded on the practice of conflicting legislative chambers at times appointing representatives to meet in conference authorized to discuss questions in dispute, and to suggest possible modes of settlement. In that practice, recognized both in Great Britain and her colonies, as well as in the United States, may be found the germ of which the joint sitting elaborated in this Constitution is the development.

In the Australian Commonwealth the question upon which the members present at the joint sitting “may deliberate and shall vote together” are—(1) the bill as last proposed by the House of Representatives ; and (2) any amendments which have been made by one House and not agreed to by the other. Any such amendments which are affirmed by an absolute majority of the total number of the members of both Houses will be taken to be carried ; and the Bill itself, with any amendments so carried, must be voted upon, and if affirmed by a similar “absolute majority” of members it will be presented for the Royal assent, as if it had been passed by both Houses separately.

Sec. 57 of the “Commonwealth of Australia Constitution Act” (63-64 Vict. c. 12) runs as follows—

“The members present at the joint sitting may deliberate and shall vote together upon the proposed law as last proposed by the House of Representatives, and upon amendments, if any, which have been made therein by one House and not agreed to by the other, and any such amendments which are affirmed by an absolute majority of the total number of the members of the Senate and House of Representatives shall

be taken to have been carried, and if the proposed law with the amendments, if any, so carried is affirmed by an absolute majority of the total number of the members of the Senate and House of Representatives, it shall be taken to have been duly passed by both Houses of the Parliament, and shall be presented to the Governor-General for the Queen's assent." [It should be noted that this scheme for the settlement of deadlocks does not extend to Bills originating in the Senate, it is only applicable to Bills which have been initiated in and passed by the House of Representatives ]

The standing orders of the Indian Legislature will have to provide for such an "absolute majority" for passing measures referred to a joint sitting of both Houses, otherwise there will be the risk of the Legislative Assembly swamping the more select and small body—the Council of State.

### § 9 "The Governor-General may return the Bill for reconsideration."

This sub-section is apparently based on the following part of sec. 58 of the "Commonwealth of Australia Constitution Act"—

"The Governor-General may return to the House in which it originated any proposed law so presented to him, and may transmit therewith any amendments which he may recommend, and the Houses may deal with the recommendations."

Although the sub-section merely speaks of "returning" a Bill "for reconsideration," its implication is that he will transmit, along with the Bill, any changes or additions which he may recommend. It may so happen that the Governor-General finds himself in general agreement with the principles of a Bill passed by both Houses of the Legislature, but he is unable to give his assent to it, unless it is modified in certain directions. Under such circumstances he may return it for reconsideration by either Chamber. This power of returning Bills with suggested amendments is of special value, towards the end of a session, when Bills have been passed through all their stages in both Houses of the Indian Legislature, and when it has been found that inaccuracies or discrepancies have crept into some of them.

### § 10. "There shall be freedom of speech in both chambers"

The English, French, German and American constitutions agree in providing "that the legislative members shall have perfect liberty of

speech and debate in the chambers and committee rooms of the legislative bodies ; *i. e.*, that they shall not be held responsible for their words in these places when discharging their legislative duties, except by the house to which they belong. The fullest and most complete ventilation of every plan, object and purpose is necessary to wise and beneficial legislation. This could never be secured if the members should be held under the restraints imposed by the law of slander and libel upon private character. There is no doubt that this privilege may be grossly abused, since every word used in debate, and frequently something more, is now reported to the public ; but the danger to the general welfare from its curtailment is far greater than to individuals from its exercise."—*Burgess, Political Science and Constitutional Law, II, 122.*

In the United States of America the members of Congress have the freedom of speech and debate in their respective houses. The exact wording of the constitution is that for any speech or debate in either house they shall not be questioned in any other place. This means that only the house itself can call a member to account for what he says in the house. It means that he is not subject to any prosecution for libel or slander before the Courts for what he says in the house to which he belongs or in its committees, or for the official publication of what he says.

In Great Britain the members of both Houses of Parliament have perfect freedom of speech and debate in their respective houses. They cannot be legally dealt with for anything said in the House by any Court or body outside the House. If, however, they cause their words or speeches to be published, they are subject to prosecution for libel, like private persons (*Anson, Law and Custom of the constitution, pp. 139, 146 ; May, Parliamentary Practice, 112, 122, 142, 143*). This was the decision in the famous case of *Stockdale v. Hansard*, making the members of the House of Commons liable to prosecution for libel in case their words are defamatory of private character and in case they cause the publication of these words (Prof. Burgess doubts whether the decision in *Stockdale vs. Hansard* is held to apply to the members of the House of Lords).

It is likely that the principle laid down in *Stockdale vs. Hansard* will be applicable to members of both Houses of the Indian Legislature, if the words used by them are defamatory of private character, and *if they cause the publication of these words* : it seems however, that they will



not be liable to prosecution if their words are *only published* in the *official* report of the proceedings

67A.—“(1) The estimated annual expenditure and revenue of the Governor-General in Council shall be laid in the form of a statement before both chambers of the Indian legislature in each year.

“(2) No proposal for the appropriation<sup>1</sup> of any revenue or moneys for any purpose shall be made except on the recommendation of the Governor-General.<sup>2</sup>

“(3) The proposals of the Governor-General in Council for the appropriation of revenue or moneys relating to the following heads of expenditure shall not be submitted to the vote of the legislative assembly, nor shall they be open to discussion by either chamber at the time when the annual statement is under consideration, unless the Governor-General otherwise directs—

- (i) interest and sinking fund charges<sup>3</sup> on loans ; and
- (ii) expenditure of which the amount is prescribed by or under any law ; and
- (iii) salaries and pensions of persons appointed by or with the approval of His Majesty or by the Secretary of State in Council ; and
- (iv) salaries of chief commissioners and judicial commissioners ; and

(v) expenditure classified by the order of the Governor-General in Council as—

(a) ecclesiastical ;

(b) political ;

(c) defence.

“(4) If any question arises whether any proposed appropriation of revenue or moneys does or does not relate to the above heads, the decision of the Governor-General on the question shall be final.

“(5) The proposals of the Governor-General in Council for the appropriation of revenue or moneys relating to heads of expenditure not specified in the above heads shall be submitted to the vote of the legislative assembly in the form of demands for grants.

“(6) The legislative assembly may assent or refuse its assent to any demand or may reduce the amount referred to in any demand, by a reduction of the whole grant.

“(7) The demands as voted by the legislative assembly shall be submitted to the Governor-General in Council, who shall, if he declares that he is satisfied that any demand which has been refused by the legislative assembly is essential to the discharge of his responsibilities, act as if it had been assented to, notwithstanding the withholding of such assent or the reduction of the amount therein referred to, by the legislative assembly.

“(8) Notwithstanding anything in this section the Governor-General shall have power, in cases of emergency, to authorise such expenditure as may, in his opinion, be necessary for the safety or tranquillity of British India or any part thereof.

“This is a new provision for the submission of the Indian Budget to the vote of the Legislative Assembly, on the understanding that this body is constituted as a chamber reasonably representative in character and elected directly by suitable constituencies. The committee consider it necessary (as suggested to them by the consolidated fund charges in the Imperial Parliament) to exempt certain charges of a special or recurring nature, which have been set out in the Bill, *e.g.*, the cost of defence, the debt charges and certain fixed salaries, from the process of being voted. But otherwise they would leave the Assembly free to criticise and vote the estimates of expenditure of the Government of India. It is not, however, within the scheme of the Bill to introduce at the present stage any measure of responsible Government into the central administration, and a power must be reserved to the Governor-General in Council of treating as sanctioned any expenditure which the Assembly may have refused to vote if he considers the expenditure to be necessary for the fulfilment of his responsibilities for the good government of the country. It should be understood from the beginning that this power of the Governor-General in Council is real, and that it is meant to be used if and when necessary”—*J. S. C. R. Vide “Indian Legislative Rules,” App. A*

### § 1 “Appropriation of any revenue or moneys.”

An appropriation of revenue or moneys is the setting apart, assigning or applying to a particular use or to a particular person a certain sum of money. It is an application of money already raised or an authority to spend money already available. Public revenue is generally paid into a consolidated fund. Into this fund flows every stream of the revenue, the proceeds of taxation, fees, penalties and other sums of money received by the treasury on behalf of His Majesty. From this fund proceed the supplies necessary for carrying on the various branches of the public-service. (*May's Parliamentary Practice, 10th Ed., 558*). In addition to the consolidated fund there may be large sums of money raised on loan.

Of this a separate account is kept as not coming under the heading of revenue. In this section, however, the words "revenue or moneys" are wide enough to cover loan money as well as revenue. The revenue or money can only be issued by virtue of a legal appropriation, that is, by an Act of the Legislature.

"Statutory provision must be made by Parliament during each financial year, to ensure that all the money therein raised for the service of the Crown be applied to a distinct use either wholly or partly, within the current financial year; as the proceeds of taxation should not be reserved for accumulation pending the decision of Parliament or otherwise left without specific appropriation." (*May's Parl. Prac.* 10th Ed p. 557)

**§ 2. "No proposal for appropriation . . . except on the recommendation of the Governor-General."**

Standing Order No 66 of the British House of Commons provides that it will not receive any *petition*, or *proceed upon any motion*, for a *grant or charge upon the public revenue*, whether payable out of the Consolidated Fund or out of money to be provided by the Parliament, except upon the recommendation of the Crown. This rule adopted in 1706 was designed to prevent improvident expenditure on private initiative. It has proved not only an invaluable protection to the Treasury but a bulwark for the authority of the ministry. Its importance has been so well recognized that it has been embodied in the fundamental laws of the self-governing colonies\* and in this sub-section of the Government of India Act.

"Although in terms the rule applies only to a motion for making a grant, it has been construed to cover any amendment for increasing a grant beyond the amount recommended from the Crown—an extension certainly needed to protect both the Treasury and the authority of the ministers. When, therefore, a minister moves that a sum of money be granted for a definite purpose no amendment is in order either to increase that sum or to alter its destination. But the rule does not forbid a reduction. It follows that if any member deems the sum named too small, his

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\* British North America Act § 54. Commonwealth of Australia Constitution Act, § 56—"A vote, resolution, or proposed law for the appropriation of revenue or moneys shall not be passed unless the purpose of the appropriation has in the same Session been recommended by message of the Governor-General to the House in which the proposal originated."

only course is to move to reduce it in order to draw attention to its insufficiency.'

"A still greater extension of the rule is made in its application to taxes, but this does not depend upon the standing order, but upon a general constitutional principle which has gradually been evolved therefrom. The principle has, in fact, been expanded until it may be stated in the general form that *no motion can be made to raise or expend national revenue without a recommendation from the Crown, or to increase the sum asked for by the Crown*. The government has, accordingly, the exclusive right to propose fresh national taxation, whether in the form of new taxes, or of higher rates for existing ones, and no private member can move to augment the taxes so proposed. He can, however, move to reduce them, and he is even free to bring in a bill to repeal or reduce taxes which the government has not proposed to touch"—*Lowell's Government of England, Vol. I, pp. 279-283*.

### § 3 "Sinking fund charges."

These consist of special sums of money earmarked for the repayment of loans, or specified sums annually devoted to the discharge of debt and to the "terminable annuities." Under all sinking fund systems there is a determination of part of the revenue to the purpose of repayment which, if steadily persisted in, will extinguish the liabilities, unless the relief so obtained is used for fresh loans. For further details about the Sinking Fund System, see *Bastable, Public Finance, pp 701-705*

**67B.**—“(1) Where either chamber of the Indian legislature refuses leave to introduce, or fails to pass in a form recommended by the Governor-General, any Bill, the Governor-General may certify that the passage of the Bill is essential for the safety, tranquillity or interests of British India or any part thereof, and thereupon—

Provision for case of failure to pass legislation.

[1919, s. 26]

(a) if the Bill has already been passed by the other chamber, the Bill shall, on signature by the Governor-General, notwith-

standing that it has not been consented to by both chambers, forthwith become an Act of the Indian legislature in the form of the Bill as originally introduced or proposed to be introduced in the Indian legislature, or (as the case may be) in the form recommended by the Governor-General ; and

- (b) if the Bill has not already been so passed, the Bill shall be laid before the other chamber, and, if consented to by that chamber in the form recommended by the Governor-General, shall become an Act as aforesaid on the signification of the Governor-General's assent, or, if not so consented to, shall, on signature by the Governor-General, become an Act as aforesaid.

“(2) Every such Act shall be expressed to be made by the Governor-General, and shall, as soon as practicable after being made, be laid before both Houses of Parliament, and shall not have effect until it has received His Majesty's assent, and shall not be presented for His Majesty's assent until copies thereof have been laid before each House of Parliament for not less than eight days on which that House has sat ; and upon the signification of such assent by His Majesty in Council, and the notification thereof by the Governor-General, the Act shall

have the same force and effect as an Act passed by the Indian legislature and duly assented to :

“Provided that, where in the opinion of the Governor-General a state of emergency exists which justifies such action, the Governor-General may direct that any such Act shall come into operation forthwith, and thereupon the Act shall have such force and effect as aforesaid, subject, however, to disallowance by His Majesty in Council”.

The proposal in the Montagu-Chelmsford Report (para 279) was that the Governor-General should be empowered to certify that the passage of a Bill is essential for the safety, tranquillity or interests of British India, or that a case of emergency has arisen, and that, on such certificate being given, the Council of State should be empowered, without obtaining the concurrence of the Legislative Assembly, to pass laws which were to have effect as if passed by both Chambers

The Joint Select Committee, however, thoroughly changed this proposal into the one embodied in this section (see Notes under sec. 67 (2A)) it contains two safe-guards against the possible misuse of the certifying power viz. (1) that a Bill passed by the Governor-General under the certifying power must be laid before each House of Parliament for not less than eight days on which that House has sat ; (2) that it must receive His Majesty's assent : it is only upon the signification of such assent by His Majesty in Council and the notification thereof by the Governor-General, that the Act will be deemed to be an Act passed by the Indian Legislature and duly assented to.

The proviso to this Section, however, empowers the Governor-General—in case of emergency—to direct that any such Act shall come into operation forthwith : the Act is, however, later subject to disallowance by His Majesty in Council.

- 68.** (1) When a Bill has been passed “by both chambers of the Indian legislature.” the Governor-General, may declare that he assents to the “Bill” or that

Assent of Governor-General to Acts. [1861, c. 67, s. 20 ; 1919, 2nd Sch., Pt. II.]

he withholds assent from the "Bill," or that he reserves the "Bill" for the signification of His Majesty's pleasure thereon.

(2) "A Bill passed by both chambers of the Indian legislature shall not become an Act" until the Governor-General has declared his assent thereto, or, in the case of a "Bill" reserved for the signification of His Majesty's pleasure, until His Majesty "in Council" has signified his assent and that assent has been notified by the Governor-General.

All legislative measures passed by the legislatures in India are subject to the power of veto on the part of the Crown and of the authorities representing the Crown in India, as in the case of all colonial legislatures. When a bill passed by both Houses of the Indian legislature is presented to the Governor-General for his assent, he may do one of the following three things—

- (1) He may assent to the Bill ; and thereupon it becomes law and remains law unless it is expressly disallowed by His Majesty in Council (sec 69)
- (2) He may withhold assent, that is absolutely veto the Bill, and thereupon it is lost for the time being.
- (3) He may receive the Bill for the signification of His Majesty's pleasure thereon ; such a Bill cannot become an Act until His Majesty in Council has signified his assent, and that assent has been notified by the Governor-General.

**69.** (1) When an Act of the "Indian legislature

Power of Crown to  
disallow Acts. [1772,  
s. 37, 1861, c. 67, s. 21 ;  
1919, 2nd Sch., Pt. II.]

has been assented to by the Governor-General, he shall send to the Secretary of State an authentic copy thereof, and it shall be lawful for His Majesty "in Council" to signify his disallowance of any such Act.

(2) Where the disallowance of any such Act has been so signified, the Governor-General shall forth-



with notify the disallowance, and thereupon the Act, as from the date of the notification, shall become void accordingly.

**70.** *Repealed by the Government of India Act, 1919.*

## REGULATIONS AND ORDINANCES.

**71.** (1) The Local Government of any part of British India to which this section  
Power to make regulations, [1870, c. 3, s. 1, para 1.] for the time being applies may propose to the Governor-General in Council the draft of any regulation for the peace and good government of that part, with the reasons for proposing the regulation.

(2) Thereupon the Governor-General in Council  
[1870 c. 3, s. 1, para. 2.] may take any such draft and reasons into consideration; and, when any such draft has been approved by the Governor-General in Council and assented to by the Governor-General, it shall be published in the Gazette of India and in the local official gazette, if any, and shall thereupon have the like force of law and be subject to the like disallowance as if it were an Act of the "Indian legislature."

(3) The Governor-General shall send to the Secretary of State in Council an authentic  
[1870, c. 3, s. 2.] copy of every regulation to which he has assented under this section.

(3 A) A regulation made under this section for any territory shall not be invalid by reason only that it confers or delegates power to confer on courts or administrative authorities power to sit or act outside the territory in respect of which they have jurisdiction or functions, or that it confers or delegates power to confer appellate jurisdiction or functions on courts or administrative authorities sitting or acting outside the territory.

(4) The Secretary of State may, by resolution in council, apply this section to any part of British India, as from a date to be fixed in the resolution, and withdraw the application of this section from any part to which it has been applied.

This power to make regulations was conferred by the Act of 1870, with the object of providing a more summary legislative procedure for the more backward parts of British India. The enactment conferring the power was passed in consequence of a despatch from the Government of India drafted by Sir H. S. Maine. (*See Minutes by Sir H. S. Maine, Nos. 67-69.*) The regulations made under it must be distinguished from the old Madras, Bengal, and Bombay regulations, which were made before 1833 by the Governments of the three presidencies and some of which are still in force.—*Ilbert.*

**72.** The Governor-General may, in cases of emergency, make and promulgate ordinances for the peace and good government of British India or any part thereof, and any ordinance so

Power to make ordinances in cases of emergency. [1861, c. 67, s. 23; 1919, 2nd Sch., Pt. II]

made shall, for the space of not more than six months from its promulgation, have the like force of law as an Act passed by the "Indian Legislature"; but the power of making ordinances under this section is subject to the like restrictions as the power of the "Indian Legislature" to make laws; and any ordinance made under this section is subject to the like disallowance as an Act passed by the "Indian Legislature," and may be controlled or superseded by any such Act.

The ordinances made and promulgated under this section, like Bills passed by both Houses of the Indian Legislature, are subject to disallowance by His Majesty in Council. Whenever the Governor-General is persuaded that an emergency exists, he may legislate independently of the Legislature, and the Ordinances so made have full force for six months, provided they are not, prior to the expiry of the period of six months, disallowed by His Majesty in Council or controlled or superseded by an Act of the Indian Legislature. The competence of the Governor-General to make and promulgate such Ordinances has recently been upheld by the Judicial Committee of the Privy Council.

"The power given by this section has rarely been exercised, and should be called into action on urgent occasions. The reasons for a resort to it should always be recorded, and these, together with the Ordinance itself, should be submitted without loss of time to His Majesty's Government."—*Ilbert*.

## GOVERNOR'S LEGISLATIVE COUNCILS.

**72A.**—“(1) There shall be a legislative council in every governor's province<sup>1</sup>, which shall consist of the members of the executive council and of the members nominated or elected as provided by this Act.

<sup>1</sup>Composition of governors' legislative councils. [1919, s. 7.]

“The governor shall not be a member of the legislative council, but shall have the right of addressing the council, and may for that purpose require the attendance of its members.

“(2) The number of members of the governors’ legislative councils shall be in accordance with the table set out in the First Schedule to this Act; and of the members of each council not more than twenty per cent. shall be official members, and at least seventy per cent. shall be elected members<sup>3</sup> :

Provided that—

(a) subject to the maintenance of the above proportions, rules under the principal Act may provide for increasing the number of members<sup>3</sup> of any council, as specified in that schedule; and

(b) the governor may, for the purposes of any Bill introduced or proposed to be introduced in his legislative council, nominate, in the case of Assam one person, and in the case of other provinces not more than two persons, having special knowledge or experience of the subject-matter of the Bill, and those persons shall, in relation to the Bill, have for the period for which they are nominated all the rights of members of the council, and shall be in addition to the numbers above referred to; and

(c) members nominated to the legislative council of the Central Provinces by the governor as the result of elections held in the Assigned Districts of

Berar shall be deemed to be elected members of the legislative council of the Central Provinces.

“(3) The powers of a governor's legislative council may be exercised notwithstanding any vacancy in the council.

“(4) Subject as aforesaid, provision may be made by rules under this Act as to—

(a) the term of office of nominated members<sup>4</sup> of governors' legislative councils, and the manner of filling casual vacancies<sup>5</sup> occurring by reason of absence of members from India, inability to attend to duty, death, acceptance of office, resignation duly accepted, or otherwise; and

(b) the conditions under which and manner in which persons may be nominated as members of governors' legislative councils; and

(c) the qualification of electors<sup>6</sup>, the constitution of constituencies<sup>7</sup>, and the method of election<sup>8</sup> for governors' legislative councils, including the number of members to be elected by communal and other electorates, and any matters incidental or ancillary thereto; and

(d) the qualifications for being and for being nominated or elected a member of any such council<sup>9</sup>; and

(e) the final decision of doubts or disputes as to the validity of any election<sup>10</sup>; and

(f) the manner in which the rules are to be carried into effect :

“Provided that rules as to any such matters as aforesaid may provide for delegating to the local government such power as may be specified in the rules of making subsidiary regulations affecting the same matters.

“(5) Subject to any such rules any person who is a ruler or subject of any State in India may be nominated as a member of a governor’s legislative council.”

### § 1. “A Legislative Council in every Governor’s Province.”

Provisions with regard to the constitution of all provincial legislative councils were contained in sections 73 to 76 of the Government of India Acts, 1915-16 ; these provisions did not fix the proportion of elected members, but elected and nominated members were dealt with together and it was laid down that of the total membership of the Councils at least half in the case of the Presidencies, and at least one-third in the case of other Provinces, should be non-official members. This section and the first Schedule to the Act provide for the composition of the enlarged councils. Each province gets “an enlarged legislative council, differing in size and composition from province to province, with a substantial elected majority, elected by direct election on a broad franchise, with such communal and special representation as may be necessary.”—*M. C. R. para 225*. In the course of the debate in the House of Commons the Rt.-Hon Mr. Montagu thus described the object of reconstituting the provincial legislative councils.

“I give the House the assurance that what we want to get in these Councils is the largest possible numbers of elected members, but there must be sufficient nominated members to represent those people whom we wish represented. There must be some nominations, as suggested by the Joint Committee, for representatives. There must also be a suffi-

cient number of officials to make sure that business is properly transacted, and to make sure that the case is properly presented. Nobody knows better than my Hon and gallant Friend opposite the dislocation of business which has gone on in India during the past few years from the necessity of having in the Councils more officials than needed for voting purposes. It prevented them doing the work for which they were appointed. Under this scheme every Governor will desire to nominate only as many officials as are required"—*P. D. H. C., Dec. 3, 1919*

*The desirability of having a bi-cameral legislature in the Provinces.*—In nearly all modern states that possess anything resembling the English Parliamentary system the legislature is divided into two chambers. With the exception of Bulgaria and Greece there is no important State in the world which does not follow this regular rule. This division of the legislature serves the important purpose of tending to check over-hasty action. It affords time for re-consideration, while it leaves the re-consideration to be undertaken by a different body of men. It is usually the case that this second body is composed of legislators who, compared with the members of the more important House, are less liable to hasty action (either because they are older, wealthier or more experienced) and less afraid of popular passion (because their tenure of power is comparatively stable). Mill claims another advantage for the bi-cameral system—"The consideration which tells most in my judgment in favour of two Chambers is the evil effect produced upon the mind of any holder of power whether an individual or an assembly, by the consciousness of having only themselves to consult." According to Sidgwick a second chamber not only checks hasty legislation, but impedes combination of sinister interests and supplements the deficiencies of the primary representative assembly.

In paragraph 258 of the Montagu-Chelmsford Report is discussed the question of establishing upper houses in the provincial legislatures. The view taken by the authors is that while the idea had some theoretical advantage the practical objection was serious. It was thought that most provinces would be unable to provide suitable members for two chambers; an upper chamber largely composed of the representatives of landed and moneyed interests might prove too conservative; landed proprietors might be discouraged from seeking the votes of the electorates; and the delays attendant on legislation in two houses would be troublesome.

Yet it was recognized that, when provincial Councils approached nearer to parliamentary form the need for revising chambers might be the more felt, for which reason it was suggested that the Statutory Commission should examine the question further. "These suggestions have attracted comparatively little notice in the opinions received. Some of the land-owner's associations have urged the establishment of second chambers in which their interests would be strongly represented. Progressive opinion on the other hand inclines to regard a second chamber as an inconvenient encumbrance. It is apparent that a bi-cameral system would throw additional burdens on the local government and complicate the business of administration, which may partly account for the lack of interest shown by local Governments in the idea. It is, however, fairly clear to us that at the present stage the proposal is not a practical one; and the only point for consideration is whether, as two local governments have suggested, powers should be taken from the outset of the reforms to establish second chambers at some future date when the need for them has become clear."

"It is argued that sooner or later the necessity must arise, and that unless provision is made for it from the beginning any subsequent attempt to do so will excite opposition. It seems to us probable, however, that the constitutional development of India may hereafter necessitate legislation by Parliament, at all events after the report of the first Statutory Commission. We have at present very little ground for saying that second houses will be required for the provinces. We do not think that in omitting to provide for their establishment now we are foregoing any material safe-guard." (*G. I. D.*)

The question of the desirability or otherwise of establishing second chambers in local legislatures in India has, therefore, been left for the consideration of the First Statutory Commission to be appointed ten years hence for the present all Local Legislatures in India will continue to remain uni-cameral. (*See sec. 84A.*)

*The New Constitution of the Governor's Legislative Councils* will be clearly understood from the following two tables compiled from the Rules published in the Gazette of India Extraordinary, July 29, 1920.—



. Table I.

*Total Strength of Governors' Legislative Councils.*

Provinces.	Members of Executive Council (ex-officio) + maximum number of nominated officials	Number of elected members.	Number of nominated non-officials	Percentage of elected members.	Total number of members.	Statutory number of members (according to Schedule I of this Act.)
Bengal ...	18	113	8	81'2	139	125
Madras ...	19	98	10	77'1	127	118
Bombay ...	16	86	9	77'4	111	111
United Provinces ...	16	100	7	81'2	123	118
The Punjab ...	14	71	8	76'3	93	83
Bihar & Orissa ...	18	76	9	73'7	103	98
Central Provinces	8	54*	8	77'1	70	70
Assam ...	7	39	7	73'5	53	53
Total for all Provinces.	116	637	66	77'8	819	776

\* Of these 17 will be nominated as the result of elections held in Berar. According to sec. 72A (2) (c) these members are deemed to be elected members of the Legislative Council of the Central Provinces.

Table II

*Distribution of elected members in Governors' Legislative Councils.*

Provinces.	Non-Mahomedan.	Mahomedan.	European	Anglo-Indian.	Land holder	University.	Planting	Commerce & Industry	Sikh.	Reserved.	Mining.	Christian	General Urban	Total number of elected members
Bengal ...	46	39	5	2	5	1	...	15	...	...	...	...	...	113
Madras ...	65	13	1	1	6	1	1	5	...	28*	...	5	...	98
Bombay ...	46	27	2	...	3	1	...	7	...	9	...	...	...	86
United Provinces	60	29	1	...	6	1	...	3	...	...	...	...	...	100
Bihar and Oussa	48	24	...	...	...	1	2	...	...	...	1	...	...	76
Central Provinces	28	4	...	...	2	1	...	1	...	...	1	...	...	37
Punjab ...	20	31	...	...	4	1	...	3	12	...	...	...	...	71
Assam ...	20	12	...	...	...	...	5	1	...	...	...	...	1	39

*The Parliamentary Joint Select Committee make the following general observations on the Governors' Legislative Councils—*

The Committee have altered the first schedule to the Bill, so as to show only the total strength of the legislative council in each province. They have retained the provision, now in sub-clause (2), that at least 70 per cent. of the members shall be elected, and not more than 20 per cent.

*\*Reserved Seats* —Seats shall be deemed to be reserved seats within the meaning of this Schedule for the purposes of an election if the number of Non-Brahman members already representing the constituency is less than the number of seats specified as reserved seats to the extent only of that deficiency. \*Provided that, if the number of non-Brahmin candidates at the date of the election is less than the number of reserved seats, the number of reserved seats shall be reduced to the extent of that deficiency.

shall be officials. This general stipulation will govern the distribution of the seats in each province, but in certain respects the detailed arrangements will require further consideration, and proposals should be called for from the Government of India in regard to them. The points in question, as well as some disputable matters on which the Committee wish to endorse the proposals of the Franchise Committee's report, are dealt with in the following recommendations.—

(a) The Committee regard the number of seats allotted to the rural population, as distinct from the urban, as disproportionately low and consider that it should receive a larger share of representation. They also think that an attempt should be made to secure better representation of the urban wage-earning class; and they are convinced that an effort should be made to remedy in part at least the present disparity between the size of the electorates in the different provinces. In all those matters no definite instructions need be given. The Government of India should be left a wide discretion in adjusting the figures subject, however, to the understanding that the adjustment should be effected in all cases rather by enlargement than by diminution of the representation proposed in the Franchise Committee's report.

(b) The Committee are of opinion that the representation proposed for the depressed classes is inadequate. Within this definition are comprised, as shown in the report of the Franchise Committee, a large proportion of the whole population of India. They think that the Government of India should, as it advises, be instructed to give such classes a larger share of representation by nomination, regard being had to the numbers of depressed classes in each province and after consultation with the Local Governments. This representation should, if necessary, be in addition to, but not in diminution of, the general electorate. Whenever possible, other persons than members of the Civil Services should be selected to represent the depressed classes, but if a member of those services, specially qualified for this purpose has to be appointed, his nomination should not operate to increase the maximum ratio of official seats.

(c) In the Madras Presidency the Committee consider that the non-Brahmins must be provided with separate representation by means of the reservation of seats. The Brahmins and non-Brahmins should be invited to settle the matter by negotiation among themselves, and it would only be, if agreement cannot be reached in that way, that the

decision should be referred to an arbitrator appointed for the purpose by the Government of India.

(d) The Committee would recommend that similar treatment be accorded to the Mahrattas in the Bombay Presidency

(e) The question whether women should or should not be admitted to the franchise\* on the same terms as men, should be left to the newly elected legislative council of each province to settle by resolution. The Government of India should be instructed to make rules so that, if a Legislative Council so voted, women might be put upon the register of voters in that province. The Committee have not felt able to settle this question themselves as urged by the majority of witnesses who appeared before them. It seems to them to go deep into the social system and susceptibilities of India, and, therefore, to be a question which can only, with any prudence, be settled in accordance with the wishes of Indians themselves as constitutionally expressed.

(f) The Committee are of opinion that the franchise as settled by the rules to be made under this Act should not be altered for the first ten years, and that it should at present be outside the power of the Legislative Councils to make any alteration in the franchise. The recommendation, therefore, in respect of woman suffrage, is to be regarded as altogether exceptional, and as not forming any precedent in respect of proposals for other alterations.

\* The Rt. Hon. Mr. Montagu made the following remarks on the question of Woman's Suffrage in India—

"My hon. and gallant Friend may take it from me as a fact that none the less despite the strong opinion in favour of it in India, in every part of India there is a very strong conservative opinion against it in India, more prevalent in some provinces than in other, but based very largely on the belief in old established customs, sometimes amounting to a religion. That being so, there being on the one hand on a subject of this kind, divergence of opinion going, as the Joint Committee says, deep down into the social life of India, what is the best thing for Parliament to do? I submit it is to maintain the impartiality which has been the characteristic of English Government in India ever since it was founded, and leave it to the people of India as represented to decide for themselves. That is what we have done. That is what we are doing in the case of the Brahmin *versus* non-Brahmin and that is what is suggested by the Joint Committee's Report in the case of women. Let me remind the Committee that this is not a question of enfranchising the women in our own country, living under our own social conditions, a decision which we took only after years of hesitance. It is a question of deciding now and at once whether we shall enfranchise the women of India, who live under different conditions and whose relations to things in India are matters, I would submit, for Indians themselves to decide." *P. D. H. C., Dec. 4, 1919 See para 8 of the Franchise Committee's Report, p. 192 Pt. II, of this book.*

(g) The special representation of landholders in the provinces should be reconsidered by the Government of India in consultation with the local governments.

(h) The franchise for the University seats should be extended to all graduates of over seven years' standing

(i) The Government of India should be instructed to consult with the Government of Bengal in respect of the representation of Europeans in Bengal. It appears to the Committee that there are good reasons for a readjustment of that representation. The recommendations of the report of the Franchise Committee in respect of European representation in other provinces may be accepted.

(j) The question whether the rulers and subjects of Indian States may be registered as electors or may be elected to the legislative councils should be left to be settled in each case by the Local government of the province.

(k) The Committee are of opinion that dismissal from the service of the government in India should not be a disqualification for election, but that a criminal conviction entailing a sentence of more than six months' imprisonment should be a disqualification for five years from the date of the expiration of the sentence.

(l) The compromise suggested by the Franchise Committee in respect of the residential qualification of candidates for legislative councils whereby the restriction was to be imposed only in the provinces of Bombay, the Punjab, and the Central Provinces may be accepted.

(m) The recommendations of the Franchise Committee in respect of the proportionate representations of Mahomedans, based on the Lucknow compact, may be accepted.

Two further observations must be made on this question of franchise. It seems to the Committee that the principle of proportional representation may be found to be particularly applicable to the circumstances of India, and they recommend that this suggestion be fully explored, so that there may be material for consideration by the Statutory Commission when it sits at the end of ten years. Further it has been strongly represented to the Committee, and the Committee are themselves firmly convinced, that a complete and stringent Corrupt Practices Act should be passed and brought into operation before the first elections for the legislative councils. There is no such Act at present in existence in India.

and the Committee are convinced that it will not be less required in India than it is in other countries.

**§ 2. "Not more than 20 p. c. shall be official members and at least 70 p. c. shall be elected members"**

Here we have the maximum of official members (20 per cent) and the minimum of elected members (70 per cent) for Governors' Legislative Councils. From the tables given above it will be seen that in all the Governors' Legislative Councils the percentage of elected members is higher than the statutory minimum, the average for all the Provinces being 77·8 per cent. The Bengal and the United Provinces have the highest percentage (81·2) of elected members, while Assam has the lowest. As Mr. Oman pointed out, in the course of the debate on the Government of India Bill, in the House of Commons—"as matters stand at present it is quite possible that 70 per cent. might come up to 99, and that 'not more than 20 per cent' of 'official members' might be 1 per cent." (*P. D. H. C., December 3, 1919.*)

**§ 3 "Increasing the number of members."**

Under this proviso the Rules made under the Act may increase the aggregate number of members of any Governor's Legislative Council above the statutory limit prescribed in the First Schedule to this Act, provided that at least 70 per cent of the members of any Council are elected members, and not more than 20 per cent are official members. A glance at Table I above will at once show that in all the provinces except Bombay, the Central Provinces and Assam, the number of members exceeds that provided for by the First Schedule to this Act, and that the proportions required by sub-section 2 are liberally maintained.

**§ 4. "Term of office of nominated members"**

A nominated non-official member holds office for the duration of the Council to which he is nominated.

Nominated official members hold office for the duration of the Council to which they are nominated or for such shorter period as the Governor may, at the time of nomination, determine.

**§ 5. "Filling casual vacancies."**

According to sec. 93 vacancies in legislative councils occur—

(a) if a nominated or elected member resigns his office to the governor, and his resignation is accepted ;

- (b) if for a period of two consecutive months any such member is absent from India ; or
- (c) if for a period of two consecutive months he is unable to attend to the duties of his office.

Further, if any person, having been elected or nominated, subsequently becomes liable to any of the disabilities stated in clauses (a), (d), (e), (g) and (h) of sub-rule (1) or in sub-rules (2), (3), and (4) of the rules describing the general disqualifications for nomination and election (*see notes below*), as the case may be, or fails to make the prescribed oath or affirmation<sup>+</sup> within such time as the Governor considers reasonable, the Governor shall, by notification in the Gazette, declare his seat to be vacant.

When any such declaration is made, the Governor shall, by notification as aforesaid, call upon the constituency concerned to elect another person within such time as may be prescribed by the notification, or shall nominate another person, as the case may be.

When a vacancy occurs in the case of an elected member by reason of his election being declared void or by reason of absence from India, inability to attend to duty, death, acceptance of office or resignation duly accepted, the Governor shall, by notification in the Gazette, call upon the constituency concerned to elect a person for the purpose of filling the vacancy within such time as may be prescribed by the notification.

If a vacancy occurs in the case of a nominated member, the Governor shall nominate to the vacancy a person having the necessary qualification under these rules

### § 6. "Qualifications of electors"

7 (1) Every person shall be entitled to have his name registered on the electoral roll of any constituency who has the qualifications prescribed for an elector of that constituency and who is not subject to any of the disqualifications hereinafter set out, namely —

(a) is not a British subject, or

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\* Every person who is elected or nominated to be a member of the Council shall before taking his seat make, at a meeting of the Council, an oath or affirmation of his allegiance to the Crown in the following form, namely :—

I, A. B., having been <sup>elected</sup>  
nominated a member of this Council do solemnly swear  
(or affirm) that I will be faithful and bear true allegiance to His Majesty the King, Emperor of India, His heirs and successors, and that I will faithfully discharge the duty upon which I am about to enter.

(b) is a female ; or

(c) has been adjudged by a competent court to be of unsound mind ; or

(d) is under 21 years of age .

Provided that the local Government may direct that, subject to such conditions as it may prescribe, a Ruler of any State in India or the Rulers of any such States or a subject of any such State or any class of such subjects shall not be disqualified for registration by reason only of not being a British subject or British subjects .

Provided further that, if a resolution is passed by the Council after not less than one month's notice has been given of an intention to move such a resolution recommending that the sex disqualification for registration should be removed either in respect of women generally or in respect of any class of women, the local Government shall make regulations providing that women or a class of women, as the case may be, shall not be disqualified for registration by reason only of their sex :

Provided further that no person shall be entitled to have his name registered on the electoral roll of more than one general constituency.

(2) If any person is convicted of an offence under Chapter IX-A. of the Indian Penal Code punishable with imprisonment for a term exceeding six months or is, after an inquiry by Commissioners appointed under any rules for the time being in force regarding elections to a legislative body constituted under the Act, reported as guilty of a corrupt practice as specified in Part I, or in paragraph 1, 2 or 3 of Part II, of Schedule IV, his name, if on the electoral roll, shall be removed therefrom and shall not be registered thereon for a period of five years from the date of the conviction or the report, as the case may be, or, if not on the electoral roll, shall not be so registered for a like period ; and if any person is reported by any such Commissioners as guilty of any other corrupt practice, his name, if on the electoral roll, shall be removed therefrom and shall not be registered thereon for a period of three years from the date of the report or, if not on the electoral roll, shall not be so registered for a like period .

Provided that the local Government may direct that the name of any person to whom this sub-rule applies shall be registered on the electoral roll.

*The qualifications of an elector for a general constituency are those based on—*



- (1) Community, (*in all provinces except the Shillong Constituency in Assam*)
- (2) Residence, (*in all provinces*) and
- (3) (a) \* Occupation of a house or a building, (*in all provinces except Bihar and Orissa and Assam*) or,
- (b) Payment of municipal taxes, Cantonment taxes or fees, (*in all provinces except Bombay and Madras ; in Madras assessment to property-tax, tax on Company or Profession-tax qualifies a voter for franchise*) or,
- (c) Payment of cesses under the Cess Act, 1880, (*in Bengal alone*) or,
- (d) Payment of Chaukidari tax or Union rate under the Village Chaukidari Act, 1870. (*in Bengal and Assam only*) or the Bengal Village Self-Government Act, 1919, (*in Bengal alone*) or,
- (e) Payment of income tax, (*in all provinces*) or,
- (f) Military service, (*in all provinces*) or,
- (g) The holding of land, (*in all provinces*).
- (h) Enjoyment of an assignment of land-revenue, (*in the Punjab alone*).
- (i) The holding of a village office, (*in the Central Provinces alone*).

*See the Gazette of India Extraordinary, July, 1920, and the Report of the Franchise Committee, paras 7—25, pp. 192—207, Pt. II.*

## § 7. "The Constitution of Constituencies"

"A general constituency" means a non-Mahomedan, Mahomedan, Indian Christian, European or Anglo-Indian or a Sikh (*in the case of the Punjab*) Constituency.

"A Special Constituency" means Land-holders, University, Planters, Commerce and Industries, Planting or Mining (*in the case of Bihar and Orissa, the Central Provinces*).

(1) (a) No person is eligible for election as a member of the Council to represent a general constituency unless his name is registered on the electoral roll of the constituency or of any other constituency in the province : unless he resides in the constituency for which he desires to be elected (except in Bombay and Madras) and unless in the case of

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\* In the United Provinces, the Punjab, Central Provinces ownership or tenancy of a building is a qualification for franchise.

a non-Mahomedan, Mahomedan, European or Anglo-Indian constituency he is himself a non-Mahomedan, Mahomedan, European or Anglo-Indian, as the case may be.

(b) No person is eligible for election as a member of the Council to represent a special constituency unless his name is registered on the electoral roll of the constituency. The qualifications for electors for special emstituencies vary with the different constituencies and with the different provinces.

### § 8. "The method of Election for Governors' Legislative Councils."

The following rules are generally applicable to all Governors' Legislative Councils:—

1. (1) Any person may be nominated as a candidate for election in any constituency for which he is eligible for election under these rules
- (2) On or before the date on which a candidate is nominated the candidate shall make in writing and sign a declaration appointing either himself or some other person, who is not disqualified under these rules for the appointment, to be his election agent, and no candidate shall be deemed to be duly nominated unless such declaration has been made.
- (3) A candidate who has withdrawn his candidature shall not be allowed to cancel the withdrawal or to be renominated as a candidate for the same election.
2. (1) If the number of candidates who are duly nominated and who have not withdrawn their candidature before such time as the local Government may fix in this behalf exceeds that of the vacancies, a poll shall be taken.
- (2) If the number of such candidates is equal to the number of vacancies, all such candidates shall be declared to be duly elected.
- (3) If the number of such candidates is less than the number of vacancies, all such candidates shall be declared to be elected, and the Governor shall, by a notification in the Gazette, call for fresh nominations for the remaining vacancy or vacancies, and if any such are received, shall call upon the constituency to elect a member or members, as the case may be.

- (4) Votes shall be given by ballot and in general and Land-holders' constituencies in person. No votes shall be received by proxy.
  - (5) In plural-member constituencies every elector shall have as many votes as there are members to be elected . provided that no elector shall give more than one vote to any one candidate.
  - (6) Votes shall be counted by, or under the supervision of, the Returning Officer, and any candidate, or, in the absence of the candidate, a representative duly authorised by him in writing, shall have a right to be present at the time of counting.
  - (7) When the counting of the votes has been completed, the Returning Officer shall forthwith declare the candidate or candidates, as the case may be, to whom the largest number of votes has been given to be elected :
- Provided that, if one or more seats are reserved, the Returning Officer shall first declare to be elected the non-Brahman candidate or candidates, as the case may be, to whom the largest number of votes has been given
- (8) Where an equality of votes is found to exist between any candidates and the addition of one vote will entitle any of the candidates to be declared elected the determination of the person or persons to whom such one additional vote shall be deemed to have been given shall be made by lot to be drawn in the presence of the Returning Officer and in such manner as he may determine
  - (9) The Returning Officer shall without delay report the result of the election to the Secretary to the Council, and the name or names of the candidate or candidates elected shall be published in the Gazette.
3. (a) Subject to the provisions of these rules, the local Government shall make regulations providing—
    - (1) for the form and manner in, and the conditions on, which nominations may be made, and for the scrutiny of nominations ;
    - (2) for the appointment of a Returning Officer for each constituency and for his powers and duties :

- (3) in the case of general and Landholders' constituencies, for the division of the constituencies into polling areas in such manner as to give all electors such reasonable facilities for voting as are practicable in the circumstances, and for the appointment of polling stations for these areas ,
  - (4) for the appointment of officers to preside at polling stations, and for the duties of such officers ;
  - (5) for the checking of votes by reference to the electoral roll ;
  - (6) for the manner in which votes are to be given, and in particular for the case of illiterate voters or voters under physical or other disability ;
  - (7) for the procedure to be followed in respect of tender of votes by persons representing themselves to be electors after other persons have voted as such electors ,
  - (8) for the scrutiny of votes ,
  - (9) for the safe custody of ballot papers and other election papers, for the period for which such papers shall be preserved, and for the inspection and production of such papers ;
- and may make such other regulations regarding the conduct of elections as it thinks fit.
- (b) Notwithstanding any thing in these rules, if a resolution in favour of the introduction of proportional representation is passed by the Council after not less than one month's notice has been given of an intention to move such a resolution, the local Government may for any plural-member constituencies introduce the method of election by means of the single transferable vote and may make all necessary regulations for that purpose and to that end may group together single-member constituencies so as to make new plural-member constituencies.
  - (c) In the exercise of the foregoing power regulations may be made as to elections generally or any class of elections or in regard to constituencies generally or any class of constituency or any particular constituency.
4. (1) If any person is elected by a constituency of the Council and by a constituency of either chamber of the Indian legislature.

the election of such person to the Council shall be void and the Governor shall call upon the constituency concerned to elect another person.

- (2) If any person is elected either by more than one constituency of the Council or by a constituency of the Council and a constituency of the Legislative Council of another province, he shall, by notice in writing signed by him and delivered to the Secretary to the Council or the Secretaries to both Councils, as the case may be, within seven days from the date of the publication of the result of such election in the local official Gazette, choose for which of these constituencies he shall serve, and the choice shall be conclusive.
- (3) When any such choice has been made, the Governor shall call upon the constituency or constituencies for which such person has not chosen to serve to elect another person or persons.
- (4) If the candidate does not make the choice referred to in sub-rule (2) of this rule, the elections of such person shall be void and the Governor shall call upon the constituency or constituencies concerned to elect another person or persons.

*General Election*—(1) On the expiration of the duration of a Council or on its dissolution, a general election shall be held in order that a new Council may be constituted.

(2) On such expiration or dissolution, the Governor shall, by notification in the Gazette, call upon the constituencies referred to in rule 4 to elect members in accordance with these rules within such time after the date of expiration or dissolution as may be prescribed by such notification.

Provided that, if the Governor thinks fit, such notification may be issued at any time not being more than three months prior to the date on which the duration of the Council would expire in the ordinary course of events.

(3) Before the day fixed for the first meeting of the Council the Governor shall make such nominations as may be necessary to complete the Council.

As soon as may be after the expiration of the time fixed for the election of members at any general election, the names of the members elected for the various constituencies at such election shall be notified in the Gazette. (*See Gazette of India Extraordinary July 29, 1920*)

### § 9. "Qualifications for being.....a member."

(1) A person is not eligible for election or nomination as a member of a Governor's Legislative Council if such person—

- (a) is not a British subject ; or
- (b) is a female ; or
- (c) is already a member of the Council or of any other legislative body constituted under the Act ; or
- (d) having been a legal practitioner has been dismissed or is under suspension from practising as such by order of any competent court ; or
- (e) has been adjudged by a competent court to be of unsound mind ; or
- (f) is under 25 years of age ; or
- (g) is an undischarged insolvent ; or
- (h) being a discharged insolvent has not obtained from the court a certificate that his insolvency was caused by misfortune without any misconduct on his part .

Provided that the local Government may direct that, subject to such conditions as it may prescribe, a Ruler of any State in India or the Rulers of any such States or a subject of any such State or any class of such subjects shall not be ineligible for election disqualified for nomination by reason only of not being a British subject or British subjects

Provided further that the disqualification mentioned in clause (d) may be removed by an order of the local Government in this behalf.

(2) A person against whom a conviction by a criminal court involving a sentence of transportation or imprisonment for a period of more than six months is subsisting shall, unless the offence of which he was convicted has been pardoned, not be eligible for election nomination for five years from the date of the expiration of the sentence.

(3) If any person is convicted of an offence under Chapter IX-A. of the Indian Penal Code punishable with imprisonment for a term exceeding six months or is, after an inquiry by Commissioners appointed under any rules for the time being in force regarding elections to a legislative body constituted under the Act, reported as guilty of a corrupt practice as specified in Part I, or in paragraph 1, 2 or 3 of Part II, of

Schedule IV\*. Such person shall not be eligible for  $\frac{\text{election}}{\text{nomination}}$  for five years from the date of such conviction or of the finding of the Commissioners, as the case may be, and a person reported by any such Commissioners to be guilty of any other corrupt practice shall be similarly disqualified for three years from such date.

(4) If any person has been a candidate or an election agent at an election to any legislative body constituted under the Act and has failed to lodge any prescribed return of election expenses or has lodged a return which is found, either by Commissioners holding an inquiry into the election or by a Magistrate in a judicial proceeding, to be false in any material particular, such person shall not be eligible for  $\frac{\text{election}}{\text{nomination}}$  for five years from the date of such election.

Provided that any disqualification mentioned in sub-rule (3) or sub-rule (4) of this rule may be removed by an order of the local Government in that behalf.

*See paras 26-29 of the Franchise Committee's Report, pp. 208-210 of Pt. II of this book.*

### § 10. "The final decision of doubts and disputes as to the validity of any election†."

1. In this Part and in Schedule IV, unless there is anything repugnant in the subject or context,—

- (a) "agent" includes an election agent and any person who is held by Commissioners to have acted as an agent in connection with an election with the knowledge or consent of the candidate;
- (b) "candidate" means a person who has been nominated as a candidate at any election or, who claims that he has been so nominated or that his nomination has been improperly refused, and includes a person who, when an election is in contemplation, holds himself out as a prospective candidate at such election, provided that he is subsequently nominated as a candidate at such election, and
- (c) "returned candidate" means a candidate whose name has been published under these rules as duly elected.

\* *Vide Gazette of India Extraordinary, July 29, 1920.*

† *Vide India Gazette Extraordinary, July 29, 1920.*

2. No election shall be called in question except by an election petition presented in accordance with the provisions of this Part.

3. An election petition may be presented to the Governor by any candidate or elector against any returned candidate within fourteen days from the date on which the result of the election has been published in accordance with sub-rule (g) of rule 12

4. The petition shall contain a statement in concise form of the material facts on which the petitioner relies and the particulars of any corrupt practice which he alleges and shall, where necessary, be divided into paragraphs numbered consecutively. It shall be signed by the petitioner and verified in the manner prescribed for the verification of pleadings in the Code of Civil Procedure, 1908.

5. The petitioner may, if he so desires, in addition to calling in question the election of the returned candidate, claim a declaration that he himself or any other candidate has been duly elected; in which case he shall join as respondents to his petition all other candidates who were nominated at the election.

6. At the time of presentation of the petition, the petitioner shall deposit with it the sum of one thousand rupees in cash or in Government Promissory Notes of equal value at the market rate of the day as security for the costs of the same.

7. (1) If the provisions of rule 6 are not complied with, the Governor shall dismiss the petition.

(2) Upon compliance with the provisions of rule 6.—

(a) the Governor shall appoint as Commissioners for the trial of the petition three persons who are or have been, or are eligible to be appointed, Judges of a High Court within the meaning of section 101 (3) of the Act, and shall appoint one of them to be the President, and thereafter all applications and proceedings in connection therewith shall be dealt with and held by such Commissioners;

(b) the President of the Commission so constituted shall, as soon as may be, cause a copy of the petition to be served on each respondent and to be published in the Gazette, and may call on the petitioner to execute a bond in such amount and with such sureties as he may require for the payment of any further costs. At any time within fourteen days after such publication, any other candidate shall be entitled to be joined



as a respondent on giving security in a like amount and procuring the execution of a like bond.

- (3) When in respect of an election in a constituency more petitions than one are presented, the Governor shall refer all such petitions to the same Commissioners, who may at their discretion inquire into the petitions either in one or in more proceedings as they shall think fit.

8 Every election petition shall be inquired into by the Commissioners, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908, to the trial of suits provided that it shall only be necessary for the Commissioners to make a memorandum of the substance of the evidence of any witness examined by them.

9. The inquiry shall be held at such place as the Governor may appoint provided that the Commissioners may in their discretion sit at any other place in the presidency for any part of the inquiry, and may depute any one of their number to take evidence at any place in the presidency.

10 (1) No election petition shall be withdrawn without the leave of the Commissioners.

- (2) If there are more petitioners than one, no application to withdraw a petition shall be made except with the consent of all the petitioners.

- (3) When an application for withdrawal is made, notice thereof fixing a date for the hearing of the application shall be given to all other parties to the petition and shall be published in the Gazette.

- (4) No application for withdrawal shall be granted if the Commissioners are of opinion that such application has been induced by any bargain or consideration which the Commissioners consider ought not to be allowed.

- (5) If the application is granted—

- (a) the petitioner shall be ordered to pay the costs of the respondent theretofore incurred or such portion thereof as the Commissioners may think fit ;

- (b) such withdrawal shall be reported to the Governor, who shall publish notice thereof in the Gazette ; and

(c) any person who might himself have been a petitioner may, within seven days of such publication, apply to be substituted as petitioner in place of the party withdrawing, and, upon compliance with the conditions of rule 6 as to security, shall be entitled to be so substituted and to continue the proceedings upon such terms as the Commissioners may think fit.

11. (1) An election petition shall abate only on the death of a sole petitioner or of the survivor of several petitioners
- (2) Such abatement shall be reported to the Governor, who shall publish notice thereof in the Gazette.
- (3) Any person who might himself have been a petitioner may, within seven days of such publication, apply to be substituted as petitioner, and, upon compliance with the conditions of rule 6 as to security, shall be entitled to be so substituted and to continue the proceedings upon such terms as the Commissioners may think fit.

12. If before the conclusion of the trial of an election petition the respondent dies or gives notice that he does not intend to oppose the petition, the Commissioners shall cause notice of such event to be published in the Gazette, and thereupon any person who might have been a petitioner may, within seven days of such publication, apply to be substituted for such respondent to oppose the petition, and shall be entitled to continue the proceedings upon such terms as the Commissioners may think fit.

13. Where at an inquiry into an election petition any candidate, other than the returned candidate, claims the seat for himself, the returned candidate, or any other party may give evidence to prove that the election of such candidate would have been void if he had been returned candidate and a petition had been presented complaining of his election.

14. When at an inquiry into an election petition the Commissioners so order, the Advocate General, or the Government Advocate, or a legal practitioner, appointed by the Governor, as the case may be, or some person acting under his instructions shall attend and take such part therein as they may direct.

- 15 (1) Save as hereinafter provided in this rule, if in the opinion of the Commissioners—

- (a) the election of a returned candidate has been procured or induced or the result of the election has been materially affected, by a corrupt practice, or,
  - (b) any corrupt practice specified in Part I of Schedule IV has been committed, or,
  - (c) the result of the election has been materially affected by any irregularity in respect of a nomination paper, or by the improper reception or refusal of a vote, or by any non-compliance with the provisions of the Act or the rules or regulations made thereunder, or by any mistake in the use of any form annexed thereto, the election of the returned candidate shall be void
- (2) If the Commissioners report that a returned candidate has been guilty by an agent (other than his election agent) of any corrupt practice specified in Part I of Schedule IV which does not amount to any form of bribery other than treating as hereinafter explained or to the procuring or abetment of personation, and if the Commissioners further report that the candidate has satisfied them that—
- (a) no corrupt practice was committed at such election by the candidate or his election agent, and the corrupt practices mentioned in the report were committed contrary to the orders and without the sanction or connivance of such candidate or his election agent and
  - (b) such candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at such election, and
  - (c) the corrupt practices mentioned in the said report were of a trivial, unimportant and limited character, and
  - (d) in all other respects the election was free from any corrupt practice on the part of such candidate or any of his agents,
- then the Commissioners may find that the election of such candidate is not void.

*Explanation.*—For the purposes of this sub-rule “treating” means the incurring in whole or in part by any person of the expense of giving or providing any food, drink, entertainment or provision to any person with the object, directly or indirectly, of inducing him or any other person to

vote or refrain from voting or as a reward for having voted or refrained from voting.

16 (1) At the conclusion of the inquiry, the Commissioners shall report whether the returned candidate or any other party to the petition who has under the provisions of these rules claimed the seat has been duly elected, and in so reporting shall have regard to the provisions of rule 15.

(2) The report shall be in writing and shall be signed by all the Commissioners. The Commissioners shall forthwith forward their report to the Governor who, on receipt thereof, shall issue orders in accordance with the report and publish the report in the Gazette, and the orders of the Governor shall be final.

17 If either in their report or upon any other matter there is a difference of opinion among the Commissioners, the opinion of the majority shall prevail, and their report shall be expressed in the terms of the views of the majority.

18. Where any charge is made in an election petition of any corrupt practice, the Commissioners shall record in their report—

(a) a finding whether a corrupt practice has or has not been proved to have been committed by any candidate or his agent, or with connivance of any candidate or his agent, and the nature of such corrupt practice, and

(b) the names of all persons (if any) who have been proved at the inquiry to have been guilty of any corrupt practice and the nature of such corrupt practice with any such recommendations as they may desire to make for the exemption of any such persons from any disqualifications they may have incurred in this connection under these rules.

Sessions and duration of governors' legislative councils. [1919, s. 8.]

**72 B.** “(1) Every governor's legislative council shall, continue for three years from its first meeting<sup>1</sup>:

Provided that—

“(a) the council may be sooner dissolved<sup>2</sup> by the governor; and

“(b) the said period may be extended by the governor for a period not exceeding one year, by notification in the official gazette of the province, if in special circumstances (to be specified in the notification) he so think fit; and

“(c) after the dissolution of the council the governor shall appoint a date not more than six months or, with the sanction of the Secretary of State, not more than nine months from the date of dissolution for the next session of the council.

“(2) A governor may appoint such times and places for holding the sessions of his legislative council as he thinks fit, and may also, by notification or otherwise, prorogue the council.

“(3) Any meeting of a governor's legislative council may be adjourned by the person presiding.

“(4) All questions in a governor's legislative council shall be determined by a majority of votes of the members present other than the person presiding, who shall, however, have and exercise a casting vote in the case of an equality of votes.

**§ 1. “Shall continue for three years from its first meeting.”**

The maximum potential period for a Governor's Legislative Council is three years. it may however, be sooner dissolved the period may also be extended by the Governor under special circumstances, for a further period not exceeding one year.

## § 2 "May be sooner dissolved."

This sub-section confers upon the Governor the power to dissolve the Legislative Council before the expiration of the three years for which it is elected. Under the full parliamentary system the power of the Executive Head to dissolve the legislature is subject to the constitutional rule that this great power can be exercised only on the advice and approval of a Minister directly responsible to the popular chamber. The granting of a dissolution is, of course, an executive act the ministerial responsibility for which can be easily established. The following have been suggested as the leading considerations which should reasonably support and justify ministerial advice in favour of a dissolution (*Todd, 2nd Ed. p. 771*).

- (1) When a vote of "no confidence" is carried against a government which has not already appealed to the country.
- (2) When there are reasonable grounds to believe that an adverse vote against the Government does not represent the opinions and wishes of the country and would be reversed by a new Parliament
- (3) When the existing Parliament was elected under the auspices of the opponents of the government
- (4) When the majority against a Government is so small as to make it improbable that a strong Government can be formed from the opposition.

The refusal of a dissolution, recommended by a Minister is not an executive act; it is a refusal to do an executive act. It seems to be generally admitted by constitutional authorities that the Crown has still an undoubted right to withhold its consent to the application of a minister for permission to dissolve a Parliament. "If the Minister to whom a dissolution has been refused is not willing to accept the decision of the Sovereign, it is his duty to resign." (*Hearn's Government of England, pp 163-164*).

"As the representative of the Crown in the dominion, colony, or province, over which he is commissioned to preside, the power of dissolution rests absolutely with the Governor or Lieutenant Governor for the time being. He is personally responsible to the Crown for the lawful exercise of this prerogative but he is likewise bound to take into account the welfare of the people, being unable to divest himself of

a grave moral responsibility towards the colony he is commissioned to govern." (*Todd, Parl. Govt in the Col. 2nd Ed. p. 800.*)

"It is the duty of a Governor to consider the question of a dissolution of the parliament or legislature solely in reference to the general interests of the people and not from a party standpoint. He is under no obligation to sustain the party in power if he believes that the accession to office of their opponent would be more beneficial to the public at large. He is, therefore, justified in withholding a dissolution requested by his ministers, when he is of opinion that it was asked for merely to strengthen a particular party, and not with a view to ascertain the public sentiment upon disputed questions of public policy. These considerations would always warrant a governor in withholding his consent to a dissolution applied for, under such circumstances, by a ministry that had been condemned by a vote of the popular chamber. If he believes that a strong and efficient administration could be formed that would command the confidence of an existing Assembly, he is free to make trial thereof, instead of complying with the request of his Ministers to grant them a dissolution as an alternative to their enforced resignation of office. On the other hand, he may at his discretion grant a dissolution to a ministry defeated in Parliament and desirous of appealing to the constituencies, notwithstanding that one or both branches of the legislature should remonstrate against the proposed appeal, if only he is persuaded that it would be for the public advantage that the appeal should be allowed." (*Todd*)

**72 C.** "(1) There shall be a president of a governor's legislative council<sup>1</sup>, who shall, until the expiration of a period of four years from the first meeting

<sup>1</sup> Presidents of governors' legislative councils. [1919, s. 9.]

of the council as constituted under this Act, be a person appointed by the governor, and shall thereafter be a member of the council elected by the council and approved by the governor :

"Provided that if at the expiration of such period of four years the council is in session, the president

then in office shall continue in office until the end of the current session, and the first election of a president shall take place at the commencement of the next ensuing session.

“(2) There shall be a deputy-president of a governor’s legislative council who shall preside at meetings of the council in the absence of the president, and who shall be a member of the council elected by the council and approved by the governor.

“(3) The appointed president of a council shall hold office until the date of the first election of a president by the council under this section, but he may resign office by writing under his hand addressed to the governor, or may be removed from office by order of the governor, and any vacancy occurring before the expiration of the term of office of an appointed president shall be filled by a similar appointment for the remainder of such term.

“(4) An elected president and a deputy-president shall cease to hold office on ceasing to be members of the council. They may resign office by writing under their hands addressed to the governor, and may be removed from office by a vote of the council with the concurrence of the governor.

“(5) The president and the deputy-president shall receive such salaries as may be determined, in the case of an appointed president, by the governor, and in the case of an elected president or deputy-president, by an Act of the local legislature.



### § 1. "A President of a Governor's legislative council."

The Committee have considered carefully the question who is to preside over the legislative councils in the provinces. They are of opinion that the Governor should not preside, and they advise that, for a period of four years, the President should be appointed by the Governor. Wherever possible it would be a great advantage if some one could be found for this purpose who had had parliamentary experience. The legislative council should itself elect a Vice-President, and at the end of four years the nominated President would disappear, and the President and Vice-President would be elected by the councils. The Committee attribute the greatest importance to this question of the Presidency of the legislative council. It will, in their opinion, conduce very greatly to the successful working of the new councils if they are imbued from the commencement with the spirit and conventions of parliamentary procedure as developed in the Imperial Parliament.—*J. S. C. R. See notes under secs. 63A and 63C.*

**72D.** "(1) The provisions contained in this section shall have effect with respect to business and procedure in governors' legislative councils.

Business and procedure in governors' legislative councils. [1919, s. 11].

"(2) The estimated annual expenditure and revenue of the province shall be laid in the form of a statement before the council in each year, and the proposals of the local government for the appropriation of provincial revenues<sup>1</sup> and other moneys in any year shall be submitted to the vote of the council in the form of demands for grants. The council may assent, or refuse its assent, to a demand, or may reduce the amount therein referred to either by a reduction of the whole grant or by the omission or reduction of any of the items of expenditure of which the grant is composed :

Provided that—

- (a) the local government shall have power, in relation to any such demand, to act as if it had been assented to, notwithstanding the withholding of such assent or the reduction of the amount therein referred to, if the demand relates to a reserved subject, and the governor certifies that the expenditure provided for by the demand is essential to the discharge of his responsibility for the subject ; and
- (b) the governor shall have power in cases of emergency to authorise such expenditure as may be in his opinion necessary for the safety or tranquillity of the province, or for the carrying on of any department ; and
- (c) no proposal for the appropriation of any such revenues or other moneys for any purpose shall be made except on the recommendation of the governor, communicated to the council.

“(3) Nothing in the foregoing subsection shall require proposals to be submitted to the council relating to the following heads of expenditure :

- (i) contributions payable by the local government<sup>2</sup> to the Governor-General in Council; and

- (ii) interest and sinking fund charges on loans ;  
and
- (iii) expenditure of which the amount is prescribed by or under any law ; and
- (iv) salaries and pensions of persons appointed by or with the approval of His Majesty or by the Secretary of State in Council ;  
and
- (v) salaries of judges of the High Court of the province and of the Advocate-General.

“If any question arises whether any proposed appropriation of moneys does or does not relate to the above heads of expenditure, the decision of the governor shall be final.

“(4) Where any Bill has been introduced or is proposed to be introduced, or any amendment to a Bill is moved or proposed to be moved, the governor may certify that the Bill or any clause of it or the amendment affects the safety or tranquillity of his province or any part of it or of another province, and may direct that no proceedings or no further proceedings shall be taken by the council in relation to the Bill, clause or amendment, and effect shall be given to any such direction.

“(5) Provision may be made by rules<sup>3</sup> under this Act for the purpose of carrying into effect the foregoing provisions of this section and for regulating the course of business in the council, and as to the persons to preside over meetings thereof in the absence

of the president and deputy-president, and the preservation of order at meetings ; and the rules may provide for the number of members required to constitute a quorum<sup>4</sup>, and for prohibiting or regulating the asking of questions on and the discussion of any subject specified in the rules.

“(6) Standing orders may be made providing for the conduct of business and the procedure to be followed in the council, in so far as these matters are not provided for by rules made under this Act. The first standing orders shall be made by the governor in council, but may, subject to the assent of the governor, be altered by the local legislatures. Any standing order made as aforesaid which is repugnant to the provisions of any rules made under this Act, shall to the extent of that repugnancy but not otherwise, be void.

“(7) Subject to the rules and standing orders affecting the council, there shall be freedom of speech in the governors’ legislative councils. No person shall be liable to any proceedings in any court by reason of his speech or vote in any such council, or by reason of anything contained in any official report of the proceedings of any such council.”

### § 1. “Proposals for the appropriation of provincial revenues.”

The Council’s powers of control over the appropriation of provincial revenues are defined in this sub-section which provides that the local Government is to submit its annual appropriation proposals for the Council’s assent in the form of “demands for grant.” It is contem-

plated that the provincial estimates comprising the expenditure required both for reserved and transferred subjects will be presented as a whole but that the Governor in Council will be responsible for the estimates in so far as they relate to reserved subjects, and the Governor and Ministers in so far as they relate to transferred subjects. In the case of demands or resolutions relating to a reserved subject, if the Council refuses its assent, the Governor in Council will, nevertheless, have power to incur the expenditure involved if the Governor certifies that such expenditure is essential to the discharge of his responsibility for the subject concerned. In the case of resolutions relating to transferred subjects the assent of the Council will be necessary, but the Governor is entrusted with power in cases of emergency to authorise expenditure which is, in his opinion, necessary for the safety or tranquillity of the Province, or for the carrying on of the administration of any department. By the exercise of this reserve power the Governor will be able to provide funds for any unforeseen emergency, and also in the last resort to prevent the temporary closing down of a transferred department owing to refusal of supplies. Provision is made for declaring by rules that certain expenditure, which includes the Provincial contributions to the Central Government, is a permanent charge on the Provincial revenues, and Local Governments will not be required to include proposals for such expenditure in the resolutions submitted to the Councils. In accordance with the principle of British parliamentary practice, which requires that every grant of money for the public service shall be based on the request or recommendation of the Crown, and with the precedents contained in Dominion constitutions (Australian Commonwealth Act, 1915, section 56, South Africa Act, 1909, section 62), it is laid down that no proposal for the appropriation of the Provincial revenues, or for the increase of any expenditure proposed to be authorised by a resolution, shall be made except on the recommendation of the Governor. This provision will debar private members from moving amendments which would have the effect of increasing the amount of any proposed appropriation.

The provisions in this sub-section as to the control of the Councils over the appropriation of revenues are in substantial accordance with the proposals contained in para 256 of the Montagu-Chelmsford Report as distinguished from that made in para. 73 of the Government of India's First Reforms Despatch

"The Committee think that the provincial budget should be submitted

to the vote of the legislative council, subject to the exemption from this process of certain charges of a special or recurring character which have been set out in the Bill. In cases where the council alter the provision for a transferred subject, the Committee consider that the Governor would be justified, if so advised by his ministers, in re-submitting the provision to the council for a review of their former decision; but they do not apprehend that any statutory prescription to that effect is required. Where the council have reduced a provision for a reserved subject which the Governor considers essential to the proper administration of the subject concerned, he will have a power of restoration. The Committee wish it to be perfectly clear that this power is real and that its exercise should not be regarded as unusual or arbitrary; unless the Governor has the right to secure supply for those services for which he remains responsible to Parliament, that responsibility cannot justly be fastened upon him."

"Whenever the necessity for new taxation arises, as arise it must, the questions involved should be threshed out by both parts of the Government in consultation together, and it is especially important that in this matter both parts of the Government should if possible, be in agreement when the proposals of the Government are laid before the legislature."—*J. S. C. R. See notes under sec. 67A.*

## § 2. "Contributions payable by the local government".

*See note 7 under sec. 45A ante and the Weston Committee's Report on Financial Relations (in Pt II. of this book).*

## § 3. "Provision may be made by rules."

*See Rules issued under this sub-section printed in Appendix B to this Part.*

## § 4. "Quorum."

"The physical presence of the members in order to form the quorum is necessary. Such has not been the general practice, however, to this time. It has been regarded as necessary that a quorum shall not merely be present, but shall also act."—*Burgess Vol. II, p. 55.*

The constitution of different countries vary widely as to the principle of the quorum and the mode of its determination. In the British colonies the quorum is invariably prescribed in their Constitution Acts.

"In those cases where the quorum is fixed by the constitution there is substantial agreement upon the principle that the presence of a majority of the legal number of members in the House is necessary and sufficient to the transaction of legislative business ..... The quorum of the absolute majority, *i.e.*, of the majority of the legal number of members, may be said to be the modern principle of general legislation. Its reason is that the majority represents in this respect the whole, and is vested with the powers of the whole. If this were not the principle, legislative action would be exposed to the tricks and stratagems of the minority to an unbearable degree" (*Burgess, Pol. Science* ii 124-5.)

In the British Parliament, on the other hand, the quorum of the House of Commons has, from very early times, been fixed at 40 and that of the House of Lords at 3, though the Houses now number respectively 707 and 600 members. Dr Burgess remarks that the fact that, under the British system, legislation is controlled by the Ministry would make it unnecessary, and often inconvenient, to require a majority quorum.

**72E.**—“(1) Where a governor's legislative council has refused leave to introduce, or has failed to pass in a form recommended by the governor, any Bill relating to a reserved subject the governor may certify that the passage of the Bill is essential for the discharge of his responsibility for the subject, and thereupon the Bill shall, notwithstanding that the council have not consented thereto, be deemed to have passed, and shall, on signature by the governor, become an Act of the local legislature in the form of the Bill as originally introduced or proposed to be introduced in the council or (as the case may be) in the form recommended to the council by the governor.

“(2) Every such Act shall be expressed to be

Provision for case of failure to pass legislation in governors' legislative councils. [1919 s. 13.]

made by the governor, and the governor shall forthwith send an authentic copy thereof to the Governor-General, who shall reserve the Act for the signification of His Majesty's pleasure, and upon the signification of such assent by His Majesty in Council, and the notification thereof by the Governor-General, the Act shall have the same force and effect as an Act passed by the local legislature and duly assented to :

“Provided that where, in the opinion of the Governor-General a state of emergency exists which justifies such action, he may, instead of reserving such Act, signify his assent thereto, and thereupon the Act shall have such force and effect as aforesaid, subject however to disallowance by His Majesty in Council.

“(3) An Act made under this section shall, as soon as practicable after being made, be laid before each House of Parliament, and an Act which is required to be presented for His Majesty's assent shall not be so presented until copies thereof have been laid before each House of Parliament for not less than eight days on which that House has sat.”

The original proposal in the draft Bill was for the constitution of Grand Committees on which the Governor was to appoint a majority of the members, with power, in cases referred to them, to pass or reject laws without the assent of the Council : it was also proposed that, by using his certifying power, the Governor was to bring the machinery of the Grand Committee into operation. Those provisions were in conformity with the proposals contained in paras 252 to 254 of the Montagu-Chelmsford Report, as further developed in paras 81 to 83 of the Government of India's First Reforms Despatch



The effect of the provisions in the draft Bill as to the Governor's certifying power was that the Governor would have been able to use this power, either (1) for the purpose of obtaining necessary legislation in relation to reserved subjects which had been initiated by a member of his Executive Council, and for which he could not obtain a majority in the Legislative Council if he relied on the ordinary procedure, or (2) for the purpose of blocking, or referring to a Grand Committee, legislative proposals which are, in his opinion, likely to imperil public safety or the maintenance of order, or which encroach on his responsibility for a specified reserved subject. but in this latter case the alternative course of referring the proposals to a Grand Committee could only be adopted with the assent of the Legislative Council.

The Joint Select Committee have rejected the plan of Grand Committees as drafted originally in the Bill. "They have done so because in their opinion the Grand Committee did not give the Governor the power of securing legislation in a crisis in respect of those matters for which he is held responsible, and because in respect of ordinary legislation about reserved subjects it perpetuated the system of securing legislation by what is known as the 'official bloc,' which has been the cause of great friction and heartburning. The responsibility for legislation on reserved subjects is with the Governor in Council, and, when the 'official bloc' has been put into operation, it has been put into operation by him, and is merely an indirect way of asserting his responsibility. The Committee think it much better that there should be no attempt to conceal the fact that the responsibility is with the Governor in Council, and they recommend a process by which the Governor should be empowered to pass an Act in respect of any reserved subject, if he considers that the Act is necessary for the proper fulfilment of his responsibility to Parliament. He should not do so until he has given every opportunity for the matter to be thoroughly discussed in the legislative council, and as a sensible man he should, of course, endeavour to carry the legislative council with him in the matter by the strength of his case. But, if he finds that cannot be so, then he should have the power to proceed on his own responsibility. Acts passed on his sole responsibility should be reserved by the Governor-General for His Majesty's pleasure, and be laid before Parliament. His Majesty will necessarily be advised by the Secretary of State for India, and the responsibility for the advice to be given to His Majesty can only rest with the Secretary of State. But the Committee

suggest that the Standing Committee of Parliament, whose appointment they have advised, should be specially consulted about Acts of this character. Provision, however, is made in the Bill for the avoidance of delay in case of a grave emergency by giving the Governor-General power to assent to the Act without reserving it, though this of course would not prevent subsequent disallowance by His Majesty in Council.<sup>1</sup>

—J. S. C. R.

### LOCAL LEGISLATURES<sup>1</sup>.

**73.** (1) For purposes of legislation, the council of a lieutenant-governor<sup>2</sup> having an executive council, shall consist of the members of his executive council “and of members nominated or elected as hereinafter provided.”

Local legislatures.  
[1861, c. 67, ss. 29, 45,  
46, 48; 1909 ss. 1 (1), 3  
(4); 1912, s. 1 (1), 1919,  
2nd Sch., Pt. II.]

(2) *Repealed by the Government of India Act 1919.*

(3) The Legislative Council of a lieutenant-governor not having an executive council, or of a chief commissioner, shall consist of members nominated or elected “as hereinafter provided.”

[1861, c. 67, ss. 45,  
46, 48; 1909, s. 1 (1);  
1912, s. 3, 1919, 2nd  
Sch., Pt. II.]

(4) *Repealed by the Government of India Act, 1919.*

#### § 1. “Local Legislature.”

*Local Legislature* means, in the case of a governor's province, the governor and the legislative council of a province, and in the case of any other province, the lieutenant-governor or chief commissioner in legislative council. *See sec. 134 (4)*

#### § 2 “Lieutenant-Governor.”

*See notes under sec. 53 and para 41 M. C. R.*

74. } *Repealed by the Government of India*  
 75. } *Act, 1919.*

76. (1) The number of members nominated or elected to the legislative council of a lieutenant-governor or chief commissioner, the number of such members required to constitute a quorum, the term of office of such members, and the manner of filling casual vacancies occurring by reason of absence from India, inability to attend to duty, death, acceptance of office, or resignation duly accepted, or otherwise, shall, in the case of each such council, be such as may be prescribed by rules made under this "section" :

"Provided that the number of members so nominated or elected shall not, in the case of the legislative council of a lieutenant-governor, exceed one hundred."

(2) At least one-third of the persons so nominated or elected to the legislative council of a lieutenant-governor or chief commissioner must be "non-officials."

(3) The Governor-General in Council may, with the approval of the Secretary of State in Council, make rules as to the conditions under which and the manner in which persons resident in India may be nominated or elected members of any of those legis-

[1861, c. 67, ss. 45, 46; 1909, s. 1 (1); 1912, s. 3; 1919, 2nd Sch. Pt., II.]

[1909, s. 6; 1912, s. 3.]

lative councils and as to the qualifications for being, and for being nominated or elected, a member of any of those councils, and as to any other matter for which rules are authorised to be made under this section, and as to the manner in which those rules are to be carried into effect.

(3A) Rules made under this section may provide for the final decision of doubts or disputes as to the validity of an election.

(3B) Subject to any rules made under this section, any person who is a ruler or  
[1916, s., 1 (2).] subject of any state in India shall be eligible to be nominated a member of a legislative council.

(4) All rules made under this section shall be  
[1909, ss. 6, 7 ; 1919, 2nd Sch., Pt. II.] laid before both Houses of Parliament as soon as may be after they are made, and those rules shall not be subject to repeal or alteration by the "Indian legislature or the local legislature."

The maximum number of members of a lieutenant-governor's legislative council is one hundred. The actual number may be less according to the rules framed under this section. One third of the total number of elected and nominated members of such legislative councils must be non-official.

The Governor-General in Council with the approval of the Secretary of State is to make rules on the following matters.—(1) the conditions under which and the manner in which persons resident in India may be nominated or elected ; (2) the qualifications for being a member of those councils ; (3) the qualifications for being nominated and elected as members ; (4) the number of members ; (5) the number of members to form a

quorum, (6) the term of office of members, (7) the manner of filling up casual vacancies of members and (8) the manner in which the above rules are to be carried into effect. Rules may also be made for the final decision of doubts and disputes as to the validity of elections.

All rules so made shall have to be laid before both Houses of Parliament and they are not subject to repeal or alteration by the Indian or local legislature.

**77. (1)** When a new lieutenant-governorship<sup>1</sup> is constituted under this Act, the

Power to constitute  
new local legislatures  
[1861, c. 67, ss. 46,  
47, 49]

Governor-General in Council may, by notification, with the sanction of His Majesty previously signified by the Secretary of State in Council, constitute the lieutenant-governor in legislative council of the province, as from a date specified in the notification, a local legislature<sup>2</sup> for that province, and define the limits of the province for which the lieutenant-governor in legislative council is to exercise legislative powers.

**(2)** The Governor-General in Council may, by notification, extend the provisions of this Act relating to legislative

[1912, s. 3.]

councils of lieutenant-governors, subject to such modifications and adaptations as he may consider necessary, to any province for the time being under a chief commissioner<sup>3</sup>.

### § 1. "A new lieutenant-governorship."

Sec. 53 (2) lays down the procedure for constituting a new lieutenant-governorship.

### § 2 "Constitute .....a local legislature"

This sub-section is intended to give the effect of secs. 46, 47 and 49 of Indian Council's Act of 1861. (*Documents I, pp. 208-209.*) It was under

these enactments that local legislatures were established for the North-Western Provinces and Oudh (1886), for Burma (1897), for Eastern Bengal and Assam (1905) and for Bihar and Orissa (1912). "The effect of these enactments appears to be that a new lieutenant-governorship cannot be created unless a local legislature is created at the same time" (*Ilbert*.)

### § 3. "Chief Commissioner."

*See notes under sec. 58.*

**78.** "(1) A lieutenant-governor or a chief commissioner who has a legislative council may appoint such times and places for holding the sessions of his legislative council as he thinks fit, and may also, by notification or otherwise, prorogue<sup>1</sup> the council, and any meeting of the legislative council of a lieutenant-governor or a chief commissioner may be adjourned by the person presiding."

Meetings of legislative councils of lieutenant-governors or chief commissioners.

[1861, c 67, ss 45, 46; 1909, s. 4; 1912 s. 3; 1919, 2nd Sch., Pt. II.]

Every lieutenant-governor who has no executive council, and every chief commissioner who has a legislative council, shall appoint a member of his legislative council to be vice-president thereof.

(2) In the absence of the lieutenant-governor or chief commissioner from any meeting of his legislative council the person to preside thereat shall be the vice-president of the council, or, in his absence, the member of the council who is highest in official rank among those holding office under the Crown<sup>2</sup> who are present at the meeting, or during the discussion of the annual

[1916, 1st Sch.]

financial statement or, of any matter of general public interest or when questions are asked, the vice-president or the member appointed to preside.

“(3) All questions at a meeting of the legislative council of a lieutenant-governor or chief commissioner shall be determined by a majority of votes of the members present other than the lieutenant-governor, chief commissioner, or presiding member, who shall, however, have and exercise a casting vote<sup>3</sup> in case of an equality of votes.

“(4) Subject to rules affecting the council, there shall be freedom of speech<sup>4</sup> in the legislative councils of lieutenant-governors and chief commissioners. No person shall be liable to any proceedings in any court by reason of his speech or vote in those councils, or by reason of anything contained in any official report of the proceedings of those councils.”

§ 1. “Prorogue.”

*See notes under sec. 63D*

§ 2 “Crown.”

*See notes under sec. 1*

§ 3 “Casting vote.”

*See notes under sec 41*

§ 4 “Freedom of Speech”

*See notes under sec 67*

[79.] *Repealed by the Government of India Act, 1919.*

80. (1) At a meeting of a local legislative council ("other than a governor's legislative council") no motion shall be entertained other than a motion for leave to introduce a measure into the council for the purpose of enactment, or having reference to a measure introduced or proposed to be introduced into the council for that purpose or having reference to some rule for the conduct of business in the council, and no business shall be transacted other than the consideration of those motions or the alterations of those rules.

Business at meetings,  
[1861, c 67, ss. 38, 48;  
1912, ss 1 (1), 3, 1919,  
2nd Sch., Pt. II.]

(2) *Repealed by the Government of India Act, 1919.*

(3) Notwithstanding anything in the foregoing provisions of this section, the local government "of a province other than a governor's province" may, with the sanction of the Governor-General in Council, make rules authorising, at any meeting of the local legislative council, the discussion of the annual financial statement of the local Government, and of any matter of general public interest, and the asking of questions, under such conditions and restrictions as may be prescribed in the rules. Rules made under this sub-section for any council may provide for the appointment of a member of the council to preside at any such discussion or when questions are asked in the place of

[1909, ss. 5, 7; 1912,  
ss. 1 (1) 3; 1919, 2nd  
Sch., Pt. II.]

[1916, 1st Sch.]



the lieutenant-governor or chief commissioner, as the case may be, and of the vice-president, and shall be laid before both Houses of Parliament as soon as may be after they are made, and shall not be subject to repeal or alteration by the "Indian legislature" or the local legislature.

"(4) The local government of any province (other than a governor's province) for which a local legislative council is hereafter constituted under this Act shall, before the first meeting of that council, and with the sanction of the Governor-General in Council, make rules for the conduct of legislative business in that council (including rules for prescribing the mode of promulgation and authentication of laws passed by that council).

"(5) The local legislature of any such province may, subject to the assent of the lieutenant-governor or chief commissioner, alter the rules for the conduct of legislative business in the local council (including rules prescribing the mode of promulgation and authentication of laws passed by the council) but any alteration so made may be disallowed by the Governor-General in Council, and if so disallowed shall have no effect."

**80A.** "(1) The local legislature of any province has power, subject to the provisions of this Act, to make laws for the peace and good government<sup>1</sup> of the

Powers of local  
legislatures. [1919, s.  
10]

territories for the time being constituting that province.”

“(2) The local legislature of any province may, subject to the provisions of the sub-section next following, repeal or alter as to that province any law made either before or after the commencement of the Government of India Act, 1919, by any authority in British India other than that local legislature.

“(3) The local legislature of any province may not, without the previous sanction of the Governor-General, make or take into consideration any law—

- (a) imposing or authorising the imposition of any new tax unless the tax is a tax scheduled as exempted from this provision by rules made under this Act ; or
- (b) affecting the public debt of India, or the customs duties, or any other tax or duty for the time being in force and imposed by the authority of the Governor-General in Council for the general purposes of the government of India, provided that the imposition or alteration of a tax scheduled as aforesaid shall not be deemed to affect any such tax or duty ; or
- (c) affecting the discipline or maintenance of any part of His Majesty’s naval, military, or air forces ; or

- (d) affecting the relations of the government with foreign princes or states ; or
- (e) regulating any central subject<sup>2</sup> ; or
- (f) regulating any provincial subject<sup>3</sup> which has been declared by rules under this Act to be, either in whole or in part, subject to legislation by the Indian legislature, in respect of any matter to which such declaration applies ; or
- (g) affecting any power expressly reserved to the Governor-General in Council by any law for the time being in force ; or
- (h) altering or repealing the provisions of any law which, having been made before the commencement of the Government of India Act, 1919, by any authority in British India other than that local legislature, is declared by rules under this Act to be a law which cannot be repealed or altered by the local legislature without previous sanction ; or
- (i) altering or repealing any provision of an Act of the Indian legislature made after the commencement of the Government of India Act, 1919 which by the provisions of such first-mentioned Act may not be repealed or altered by the local legislature without previous sanction : ”

“Provided that an Act or a provision of an Act made by a local legislature, and subsequently assented to by the Governor-General in pursuance of this Act, shall not be deemed invalid by reason only of its requiring the previous sanction of the Governor-General under this Act.”

“(4) The local legislature of any province has not power to make any law affecting any Act of Parliament.”

This section deals with the legislative powers of all local legislatures including Governor's legislative councils it represents sec 79 of the Government of India Act, 1915, as revised on the lines recommended in the Functions Committee's Report (*paras 28-35. pp. 241 to 247 of Pt. II. of this book.*)

One important object of the revision has been to limit the number of cases in which previous sanction of the Governor-General is required to Provincial Bills, and at the same time to make the statutory list of such cases complete, so as to avoid continuance of the practice whereby Bills not included in such list had to be submitted for previous sanction under “executive order.” It will be observed that the section follows the provisions of the hitherto existing law in conferring general powers of legislation on the local legislature of a province subject to the requirement of the Governor-General's previous sanction in the case of certain classes of Provincial Bills. Absence of previous sanction cannot, however, be made a ground for attacking the validity of a Bill which has received the assent of the Governor-General. This arrangement renders possible a distribution of legislative power between the Indian Legislature and the Provincial Legislatures without subjecting the validity of Provincial Acts to challenge in the Courts on the ground that such Acts involve an invasion of the sphere of the Indian Legislature. *See Notes under sec. 65 ante.*

### § 1 “Peace, and good government.”

These, or words nearly similar, have been used in most of the Constitutional Acts passed by the Imperial Parliament conferring local legislatures on British Colonies. The local legislature has not general power

to make laws for "the peace, order, and good government" of a province, for this power is subject to the several restrictions enumerated in sub-sections 3 and 4 below. A question may be raised as to whether the words "for the peace and good government of the territories for the time being constituting that province" will prevent the local legislature from passing a law which may be confined in its operation to a particular district.

The judgment of the Privy Council delivered by Lord Halsbury, L. C. in the case *Riel v. The Queen, 10 App. Ca. 678, 1885* has an important bearing on this sub-section. —

"It appears to be suggested that any provisions differing from the provisions which in this country have been made for administration, peace, order, and good government cannot, as matters of law, be provisions for peace, order and good government in the territories to which the statute relates; and, further, that if a Court of law should come to the conclusion that a particular enactment was not calculated, as a matter of fact and policy, to secure peace, order, and good government, that they would be entitled to regard any statute directed to these objects, but which a Court should think likely to fail of that effect, as *ultra vires* and beyond the competency of the Dominion Parliament, to enact. Their lordships are of opinion that there is not the least colour for such a contention. The words of the statute are apt to authorize the utmost discretion of enactment for the attainment of the objects pointed to. They are words under which the widest departure from criminal procedure, as is known and practised in this country, have been authorized in Her Majesty's Indian Empire. Forms of procedure unknown to the English Common Law have there been established and acted upon, and to throw the least doubt upon the validity of powers conveyed by those words would be of widely mischievous consequence." (*10 App. Ca. 678, 1885.*)

## § 2. "Regulating any central subject."

*See paras 29-33 of the Functions Committee's Report, pp 242-246, Part II. of this book. See also Part 3 of the Report of the Functions Committee, pp. 252-268 of Part II of this book.*

## § 3. "Regulating any provincial subject etc"

*See para 40 of the Functions Committee's Report (p. 290 of Part II. of this book.)*

**80B.** “An official shall not be qualified for election as a member of a local legislative council, and if any non-official member of a local legislative council, whether elected or nominated, accepts any office<sup>1</sup> in the service of the Crown in India, his seat on the council shall become vacant :

<sup>1</sup> Vacation of seats in local legislative councils. [1919. s 14.]

“Provided that for the purposes of this provision a minister shall not be deemed to be an official and a person shall not be deemed to accept office on appointment as a minister.”

### § 1 “Accepts any office”

Here “office” includes any paid whole-time appointment under the Crown in India except appointments as ministers. This section provides that officials (for definition of “officials” see sec. 134) shall not be qualified for election as members of a local legislative council, and that acceptance of office in the service of the Crown in India by a non-official member of a Legislative Council renders his seat vacant, but for the purpose of this section a minister is not to be deemed an official. Hence if an elected or nominated member of council accepts office on appointment *as minister*, his seat on the council will not become vacant *i e.*, such a member will not have to seek re-election (as used to be the practice in England) or re-nomination. It appears that ministers *alone* enjoy this privilege of continuing as members of the legislature without having to seek re-election or re-nomination. But the privilege does not extend to Council secretaries where seats become vacant on appointment as such (unless, of course a wider connotation is given to the word “minister” and the Council secretaries who undoubtedly form part of the provincial ministry are taken to fall under the category of ministers). they must have to be re-elected or re-nominated within six months of their appointment, if they are to continue to hold office as Council Secretaries. *See notes under sec. 52.*

**80C.** "It shall not be lawful for any member of any local legislative council to introduce, without the previous sanction of the governor, lieutenant-governor or chief commissioner, any measure affecting the public revenues of a province or imposing any charge on those revenues."

Measures affecting  
public revenue. [1919,  
2nd Sch., Pt. I.]

*See Notes under sec. 67A.*

**81.** (1) When "Bill" has been passed "by" a local legislative council, the governor, lieutenant-governor or chief commissioner, may declare that he assents to or withholds his assent from the "Bill."

Assent to Acts of  
local legislatures.

[1861, c. 67, s. 39;  
1912, ss. 1 (1), 3, 1919,  
2nd Sch., Pt. II.]

(2) If the governor, lieutenant-governor or chief commissioner withholds his assent from any such "Bill," the "Bill shall not become an Act."

(3) If the governor, lieutenant-governor or chief commissioner assents to any such "Bill," he shall forthwith send an authentic copy of the Act to the Governor-General, and the Act shall not have validity until the Governor-General has assented thereto and that assent has been signified by the Governor-General to, and published by, the governor, lieutenant-governor or chief commissioner.

[1861, c. 67, ss. 40,  
48; 1912, ss. 1 (1) 3;  
1919, 2nd Sch., Pt. II.]

(4) Where the Governor-General withholds his assent from any such Act, he shall signify to the

governor, lieutenant-governor or chief commissioner in writing his reason for so withholding his assent.

**81A.**—“(1) Where a Bill has been passed by a local legislative council, the governor, lieutenant-governor or chief commissioner may, instead of declaring that he assents to or withholds his assent from the Bill, return the Bill to the council for reconsideration, either in whole or in part, together with any amendments which he may recommend, or, in cases prescribed by rules under this Act may, and if the rules so require shall, reserve the Bill for the consideration of the Governor-General.

Return and reservation of Bills. [1919, s. 12.]

“(2) Where a Bill is reserved for the consideration of the Governor-General, the following provisions shall apply :—

(a) The governor, lieutenant-governor or chief commissioner may, at any time within six months from the date of the reservation of the Bill, with the consent of the Governor-General, return the Bill for further consideration by the Council with a recommendation that the council shall consider amendments thereto :

(b) After any Bill so returned has been further considered by the council, together with any recommendations made by the governor, lieutenant-governor or chief commissioner relating thereto, the Bill,



if re-affirmed with or without amendment, may be again presented to the governor, lieutenant-governor, or chief commissioner :

(c) Any Bill reserved for the consideration of the Governor-General shall, if assented to by the Governor-General within a period of six months from the date of such reservation, become law on due publication of such assent, in the same way as a Bill assented to by the governor, lieutenant-governor or chief commissioner but, if not assented to by the Governor-General within such period of six months, shall lapse and be of no effect unless before the expiration of that period either—

(i) the Bill has been returned by the governor, lieutenant-governor or chief commissioner, for further consideration by the council ; or

(ii) in the case of the council not being in session, a notification has been published of an intention so to return the Bill at the commencement of the next session.

“(3) The Governor-General may (except where the Bill has been reserved for his consideration), instead of assenting to or withholding his assent from

any act passed by a local legislature, declare that he reserves the Act for the signification of His Majesty's pleasure thereon, and in such case the Act shall not have validity until His Majesty in Council has signified his assent and his assent has been notified by the Governor-General.

This section provides that a Governor, or other head of a Province, may, instead of assenting to or withholding assent from a Bill passed by a Legislative Council, either return such Bill to the Council for reconsideration with suggested amendments, or reserve the Bill for consideration of the Governor-General. The provisions as to reservation follow the lines proposed by the Functions Committee (*Functions Report, paras. 55 to 39*), and allow of a reserved Bill being returned for reconsideration by the Council which passed it; the definition of the classes of Bills which are to be subject to reservation is left to rules.

The section further provides (sub-section (3)) that the Governor-General may, instead of himself assenting to or withholding assent from a Provincial Act, reserve such Act "for the signification of His Majesty's pleasure thereon." But this further power of reservation will not apply to a Bill reserved by a governor. The Royal power of veto has never been used, so far as laws passed by Parliament are concerned, ever since 1707, it is, however, not infrequently exercised in the case of laws passed by colonial legislatures, and it is likely that it may have to be frequently exercised in the case of Indian laws.

**82. (1)** When an Act has been assented to by the Governor-General, he shall send to the Secretary of State an authentic copy thereof, and it shall be lawful for His Majesty "in Council" to signify, his disallowance of "the" Act.

Power of Crown to disallow Acts of local legislatures. [1861, c. 67, ss. 41, 48; 1912, ss. 1 (1) 3. 1919 2nd sch., Pt. II.]

**(2)** Where the disallowance of an Act has been

so signified, the governor, lieutenant-governor or chief commissioner shall forthwith notify the disallowance, and thereupon the Act, as from the date of the notification, shall become void accordingly.

[83.] *Repealed by the Government of India Act, 1919.*

### VALIDITY OF INDIAN LAWS.

Removal of doubts as to validity of certain Indian laws. [1861, c. 67, ss. 14, 24, 33; 1871 c. 34, s. 1]

**84.** (1) A law made by any authority in British India shall not be deemed invalid solely on account of any one or more of the following reasons :—

(a) in the case of “an Act of the Indian legislature” or a local legislature, because it affects the prerogative of the Crown<sup>1</sup> ; or

[1861, c. 67, s. 24 ; 1916 s. 2(2) ; 1919, 2nd Sch. Pt. II.]

(b) in the case of any law, because the requisite proportion of “non-official” members was not complete at the date of its introduction into the council or its enactment ; or

[1861, c. 67, ss. 14, 33, 1912, ss. 1 (1) 3 ; 1919, 2nd Sch. Pt. II.]

(c) in the case of “an Act of” a local legislature, because it confers<sup>2</sup> on magistrates, being justices of the peace<sup>3</sup> the same jurisdiction over European British subjects as that legislature, by Acts duly made, could lawfully confer on magistrates in the exercise of

[1871, c. 34, s. 1 ; 1912 ss. 1 (1), 3, 1919, 2nd Sch. Pt. II.)

authority over other British subjects in the like cases.

A law made by any authority in British India and repugnant to any provision of this or any other Act of Parliament shall, to the extent of that repugnancy, but not otherwise, be void.

“(2) Nothing in the Government of India Act, 1919, or this Act, or in any rule made thereunder, shall be construed as diminishing in any respect the powers of the Indian Legislature<sup>4</sup> as laid down in section sixty-five of this Act, and the validity of any Act of the Indian legislature or any local legislature shall not be open to question in any legal proceedings<sup>5</sup> on the ground that the Act affects a provincial subject or a central subject, as the case may be, and the validity of any Act made by the governor of a province shall not be so open to question on the ground that it does not relate to a reserved subject.”

### § 1. “The prerogative of the Crown.”

“Prerogatives” are the residuary fractions and remnants of the sovereign power which, unimpaired by legislation and revolution, remain vested in the Crown. They are the products and survivals of the Common Law and are not the creatures of statutes. Statute law tends gradually to invade and diminish the domain of prerogative. Among the examples of prerogatives the following may be mentioned :—

- (1) The exercise of the ordinary executive authority by the Crown, through Ministers of State; subject to certain legal and customary restraints such as the control of the House of Commons by virtue of its power to refuse supplies.

- (2) Dissolution and Prorogation of Parliament.
- (3) The administration of justice in the name of the Crown, through judges and counsel appointed by the Crown
- (4) The pardon of offenders.
- (5) Command of the Army and Navy.
- (6) Foreign affairs . peace and war.
- (7) Accrediting and receiving Ambassadors.
- (8) Entering into treaties with foreign nations.
- (9) Recognition of foreign states.
- (10) Appropriating prizes of war.
- (11) Sharing legislation ; right to veto.
- (12) Allegiance, right of the Crown to the allegiance and service of its subjects.
- (13) Ecclesiastical authority with respect to the Church of England.
- (14) Control over titles, honours, precedence, franchises, etc., coining money, superintendence over infants, lunatics, and idiots.
- (15) Special remedies against the subject, such as intrusion, distress, *escheat*, extent.
- (16) Lordship of the soil.

A number of these prerogatives have become obsolete through disuse, although they have never been swept away by Act of Parliament. Others of them have been cut down and reduced to matters of form or denuded of most of their former vigour and activity—*Quick and Garran*.

## § 2. "Because it confers etc ....."

The Madras and Bombay legislatures passed certain Acts which were adjudged invalid on the ground of interference with the rights of European British subjects. (*See R. vs. Reay*, 7 Bom Cr. 6) : to confirm these provincial Acts an Indian Act (XXII of 1870) was passed in 1870. As Indian legislation could not confer on local legislatures the requisite power in future, it was conferred by an Act of Parliament in 1871.

## § 3. "Justices of the Peace."

In England these Justices of the Peace are appointed by the Lord Chancellor in the name of the Crown. They are chosen out of the county gentlemen who have a certain amount of property, and who, at their Court of Quarter Sessions, have command over all the money collected by taxes for the general use of the county—as for instance, for building

gaols, prosecuting offenders, and payment of salaries to county officials.

In India it was the judicial charter of 1726 that enabled the governor or president and the five seniors of the council to be justices of the peace who were to hold quarter sessions four times in the year, with jurisdiction over all offences except high treason. The Regulating Act of 1773 empowered the Governor-General and council and the chief justice and other judges of the Supreme Court to act as justices of the peace, and for that purpose to hold quarter sessions. The Charter Act of 1813 enacted that these justices were to have jurisdiction in cases of assault or trespass committed by British-born subjects on Indians, and also in cases of small debts due to Indians from British-born subjects. An Act of 1832 (2 & 3 Will IV, c. 117) authorized the appointment of persons other than covenanted civilians to be justices of the peace in India. "A judge or magistrate cannot try a European British subject unless he is a justice of the peace. High Court judges, sessions judges, district magistrates, and presidency magistrates are justices of the peace *ex-officio*. In other cases a justice of the peace must be a European British subject"—*Ilbert*.

#### § 4 "Nothing.....diminishing...powers of the Indian Legislature."

As regards the Indian Legislature no formal limitation is proposed of the general powers of legislation conferred by sec. 65 of this Act, but it is contemplated that the Indian Legislature will, as a matter of custom and convention, abstain from legislating on Provincial subjects, except where those subjects are declared by the Rules of classification made under sec. 45A to be subject to Indian Legislation (*Functions Report, para 33*)

#### § 5. "Shall not be open to question in any legal proceedings."

It is important to note that, though the Act provides for a division of functions between the Central Government and Provincial Governments similar to that which is to be found in Federal Constitutions, it is not contemplated that questions as to the dividing line between the spheres of the central and provincial authorities shall be the subject of legal decision in the Courts (M. C. Report, para. 212, 239). Provision is made by sec. 45A for the making of rules which will provide for the settlement of doubts as to whether "any matter does or does not belong to a Provincial subject," and the intention is that the Rules framed shall provide for such doubts being decided by administrative authority, *i.e.*, by the

Governor-General in Council subject to the control of the Secretary of State, whose duty it will be to check any tendency on the part of the Central Government to take too restrictive a view as to the subjects included in the Provincial sphere

This subsection expressly provides that the validity of any Act of the Indian legislature or of a local legislature shall not be questioned in any legal proceedings by reason of the distinction now made between central and provincial subjects.

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## PART VI A.

### STATUTORY COMMISSION.

**84A.**—(1) At the expiration of ten years after the passing of the Government of India Act, 1919, the Secretary of State, with the concurrence of both Houses of Parliament, shall submit for the approval of His Majesty the names of persons to act as a commission for the purposes of this section.

(2) The persons whose names are so submitted, if approved by His Majesty, shall be a commission for the purpose of inquiring into the working of the system of government, the growth of education, and the development of representative institutions, in British India, and matters connected therewith, and the commission shall report as to whether and to what extent it is desirable to establish the principle of responsible government, or to extend, modify, or restrict the degree of responsible government then existing therein, including the question whether the

establishment of second chambers of the local legislatures is or is not desirable.

(3) The commission shall also inquire into and report on any other matter affecting British India and the provinces, which may be referred to the commission by His Majesty.

This is an entirely new section which provides for the appointment of the first of the Commissions which are to survey periodically the political situation in India, to investigate the working of the changes introduced by the Government of India Act, 1919, and to advise as to the future. (*See M. C. R. paras 261, 264, 288 quoted below.*)

The names of the proposed Commissioners are to be submitted, when the time comes for their appointment, for the approval of both Houses of Parliament. This periodical survey of conditions in India by Commissions appointed with the approval of Parliament is a vital element in the scheme for the gradual transfer of responsibility outlined in the M. C. Report, and it has therefore been considered essential to make definite provision now for the appointment of the first Commissioners (in 1929) ten years from the date of the passing of the Government of India Act, 1919, so that the prospect of their appointment may be kept steadily in view, and the enquiry which they are to conduct may be recognised from the inception of the reforms as an important factor in the process of future development.

"We regard it as essential, if the terms of the announcement of August 20 are to be made good, that there should from time to time come into being some outside authority charged with the duty of re-surveying the political situation in India and of readjusting the machinery to the new requirements. We would provide, therefore, that ten years after the first meeting of the new councils established under the Statute a commission should be appointed to review the position. Criticism has been expressed in the past of the composition of Royal Commissions, and it is our intention that the commission which we suggest should be regarded as authoritative and should derive its authority from Parliament itself. The names of the commissioners, therefore, should be submitted by the Secretary of State to both Houses of Parliament for approval by resolution. The Commissioners' mandate should be to consider whether by



the end of the term of the legislature then in existence it would be possible to establish complete responsible government in any province or provinces, or how far it would be possible to approximate to it in others; to advise on the continued reservation of any departments for the transfer of which to popular control it has been proved to their satisfaction that the time had not yet come; to recommend the retransfer of other matters to the control of the Governor in Council if serious mal-administration were established; and to make any recommendations for the working of responsible government or the improvement of the constitutional machinery which experience of the systems in operation may show to be desirable. We intend these propositions to be read rather as an indication of our general intentions than as an attempt to draft the actual terms of the reference to the commission."—*M. C. R. para 261.*

"Inasmuch as complete responsible government essentially depends upon the existence of an electorate sufficiently active and cognisant of affairs to hold their representatives effectively to account we think that one of the most important duties of the commission will be to examine the growth of capacity and responsibility in the electorates. The approximation to complete responsibility must depend, among other things, on the growth of the electorate and on the measure in which they give evidence of an active and intelligent use of the franchise. We wish to attain complete responsibility where we can and as early as we can, and we intend that its attainment should depend upon the efforts of the Indian people themselves. It would not be fair to give it to them till they fulfil the necessary conditions."—*M. C. R. para 261.*

"It should equally be the duty of the Commission to examine and report upon the new constitution of the Government of India, with particular reference to the working of the machinery for representation, the procedure by certificate, and the results of joint sessions. The commission will, doubtless, if they see fit, have proposals to make for further changes in the light of the experience gained."—*M. C. R., para 268.*

The Committee are of opinion that the Statutory Commission should not be appointed until the expiration of ten years, and that no changes of substance in the constitution, whether in the franchise or in the lists of reserved and transferred subjects or otherwise, should be made in the interval. The Commission will be fully empowered to examine the working of the constitutions in all their details in the provinces, and to advise whether the time has come for full responsible government in each pro-

vince, or in the alternative whether and to what extent the powers of self-government already granted should be extended, or modified, or restricted. It should be clearly understood, also, that the Commission should be empowered to examine into the working of the Government of India and to advise in respect of the Government of India no less than in respect of the provincial governments."—*J. S. C. R.*

## PART VII.

### SALARIES, LEAVE OF ABSENCE, VACATION OF OFFICE, APPOINTMENTS ETC.

**85.** (1) There shall be paid to the Governor-General of India and to the other persons mentioned in the Second Schedule to this Act, out of the revenues of India, such salaries, not exceeding in any case the maximum specified in that behalf in that Schedule, and such allowances (if any) for equipment and voyage, as the Secretary of State in Council may by order fix in that behalf, and, subject to or in default of any such order, as are payable at the commencement of this Act :

Salaries and allowances of governor-general and certain other officials in India. [1793, s. 32; 1833, s. 76; 1853, s. 35; 1861, c. 67, s. 4; 1880, s. 2, Sch. I; 1912, s. 1 (1).]

(2) Provided as follows :—

(a) an order affecting salaries of members of the Governor-General's executive council may not be made without the concurrence of a majority of votes at a meeting of the Council of India :

(b) if any person to whom this section applies holds or enjoys any pension or salary, or any office of profit under the Crown or under any public office, his salary under this section shall be reduced by the amount of the pension, salary or profits of office so held or enjoyed by him ;

(c) nothing in the provisions of this section with respect to allowances shall authorise the imposition of any additional charge on the revenues of India.

(3) The remuneration payable to a person under this section shall commence on his taking upon himself the execution of his office, and shall be the whole profit or advantage which he shall enjoy from his office during his continuance therein.

“Provided that nothing in this sub-section shall apply to the allowances or other forms of profit and advantage which may have been sanctioned for such persons by the Secretary of State in Council.”

**86.** (1) The Governor-General in Council may grant to any of the members of his executive council “other than the commander-in-chief” and a governor in council and a lieutenant-governor in council may grant to any member of his executive council, leave of absence under medical certificate for a period not exceeding six months.

Leave of absence to members of executive Councils. [1861, c. 67, s. 26 ; 1912, s. 1 (1) 1916, 1919, 2nd Sch, Pt. II.]

(2) Where a member of council obtains leave of absence in pursuance of this section, he shall retain his office during his absence, and shall on his return and resumption of his duties be entitled to receive half his salary for the period of his absence; but if his absence exceeds six months his office shall become vacant.

**87.** (1) If the Governor-General, or a governor, or the commander-in-chief of His Majesty's forces in India, and "save in the case of absence on special duty or on leave under a medical certificate", if any member of the Executive Council of the Governor-General, "other than the commander-in-chief" or any member of the executive council of a governor, "or of a lieutenant-governor" departs from India, intending to return to Europe, his office shall thereupon become vacant.

*2. Sub-sections (2), (3), (4) and (5) of this section were repealed by the Second Schedule to the Government of India (Amendment) Act, 1916 (6 & 7 Geo 5, c. 37).*

**[88.]** *Repealed by the Second Schedule (Pt. III) of the Government of India Act, 1919.*

**89.** (1) If any person appointed to "the office of Governor-General" is in India on or after the event on which he is to succeed, and thinks it necessary to exercise the powers of Governor-General before he takes his seat in council, he may make known by

*Power for Governor-General to exercise powers before taking seat, [1858, s. 63; 1919 2nd Sch, Pt. III.]*

notification his appointment and his intention to assume the office of Governor-General.

(2) After the notification, and thenceforth until he repairs to the place where the council may assemble, he may exercise alone all or any of the powers which might be exercised by the Governor-General in Council.

(3) All acts done in the council after the date of the notification, but before the communication thereof to the council, shall be valid, subject, nevertheless, to revocation or alteration by the person who has so assumed the office of Governor-General.

(4) When the office of Governor-General is assumed under the foregoing provision, the vice-president, or, if he is absent, the senior member of the council "other than the commander-in-chief" then present, shall preside therein, with the same powers as the Governor-General would have had if present.

**90.** (1) If a vacancy occurs in the office of Governor-General when there is no successor in India to supply the vacancy, the Governor "of a Presidency," who was first appointed to the office of Governor by His Majesty shall hold and execute the office of Governor-General until a successor arrives or until some person in India is duly appointed thereto.

Temporary vacancy in office of Governor-General. [1861, c. 67, s. 50, 1912, s. 4. (1) 1919, 2nd Sch. Pt. III]

(2) Every such acting Governor-General, while acting as such, shall have and may exercise all the rights and powers of the office of Governor-General, and shall be entitled to receive the emoluments and advantages appertaining to the office, foregoing the salary and allowances appertaining to his office of governor; and his office of governor shall be supplied, for the time during which he acts as Governor-General, in the manner directed by this Act with respect to vacancies in the office of Governor.

(3) If, on the vacancy occurring, it appears to the governor, who by virtue of this section holds and executes the office of Governor-General, necessary to exercise the powers thereof before he takes his seat in council, he may make known by notification his appointment, and his intention to assume the office of Governor-General, and thereupon the provisions of "section eighty-nine of" this Act shall apply.

(4) Until such a Governor has assumed the office of Governor-General, if no successor is on the spot to supply such vacancy, the vice-president, or, if he is absent, the senior member of the executive council, ("other than the commander-in-chief,") shall hold and execute the office of Governor-General until the vacancy is filled in accordance with the provisions of this Act.

[1793, s. 50; 1861, c. 67, s. 50.]

[1861, c. 67, s. 51; 1919, 2nd Sch. Pt. III.]

[1793, ss. 29, 30, 1833, s. 62, 1861, c. 67, s. 51; 1909, s. 4 (1), 1919, 2nd Sch. Pts. II-III.]

(5) Every vice-president or other member of council so acting as Governor-General, while so acting, shall have and may exercise all the rights and powers of the office of Governor-General, and shall be entitled to receive the emoluments and advantages appertaining to the office, foregoing his salary and allowances as member of council for that period.

91. (1) If a vacancy occurs in the office of governor when no successor is on the spot to supply the vacancy, the vice-president, or, if he is absent, the senior member of the governor's executive council, or, if there is no council, the chief secretary to the local government, shall hold and execute the office of governor until a successor arrives, or until some other person on the spot is duly appointed thereto.

(2) Every such acting governor shall while acting as such, be entitled to receive the emoluments and advantages appertaining to the office of governor, foregoing the salary and allowances appertaining to his office of member of council or secretary.

92. (1) If a vacancy occurs in the office of a

member of the executive council of the Governor-General ("other than the commander-in-chief") or a member of the executive council of a governor, and there is no successor present on the spot, the Governor-General in Council or governor in council, as the case may be, shall supply the vacancy by appointing a temporary member of council.

Temporary vacancy in office of member of an executive council. [1793, ss. 31, 34; 1861, c. 67, s. 27; 1912, s. 1 (1); 1919, 2nd Sch. Pt. II.]

(2) Until a successor arrives the person so appointed shall hold and execute the office to which he has been appointed, and shall have and may exercise all the rights and powers thereof, and shall be entitled to receive the emoluments and advantages appertaining to the office, foregoing all emoluments and advantages to which he was entitled at the time of his being appointed to that office.

(3) If a member of the executive council of the Governor-General ("other than the commander-in-chief") or any member of the executive council of a governor is, by infirmity or otherwise, rendered incapable of acting or of attending to act as such, or is absent on leave or special duty, the Governor-General in Council or governor in council, as the case may be, shall appoint some person to be a temporary member of council.

(4) Until the return to duty of the member so incapable or absent, the person temporarily appointed shall hold and

[1919, 2nd Sch., Pt. III.]



execute the office to which he has been appointed, and shall have and may exercise all the rights and powers thereof, and shall be entitled to receive half the salary of the member of council whose place he fills, and also half the salary of any other office which he may hold, if he hold any such office, the remaining half of such last named salary being at the disposal of the Governor-General in Council or Governor in Council, as the case may be.

(5) Provided as follows :—

(a) no person may be appointed a temporary member of council who might not have been appointed to fill the vacancy supplied by the temporary appointment; and

(b) if the Secretary of State informs the Governor-General that it is not the intention of His Majesty to fill a vacancy in the Governor-General's executive council, no temporary appointment may be made under this section to fill the vacancy, and if any such temporary appointment has been made before the date of the receipt of the information by the Governor-General, the tenure of the person temporarily appointed shall cease from that date.

**93.** (1) A nominated or elected member of "either chamber of" the Indian "Legislature" or of a local legislative council may resign his office to the Governor-General or to the gover-

Vacancies in legislative councils. [1861, c. 67, ss. 12, 31, 48; 1912 ss. I (1) 3; 1919, 2nd Sch., Pt. II.]

nor, lieutenant-governor or chief commissioner, as the case may be, and on the acceptance of the resignation the office shall become vacant.

(2) If for a period of two consecutive months any such member is absent from India or unable to attend to the duties of his office, the Governor-General, governor, lieutenant-governor or chief commissioner, as the case may be, may, by notification published in the Government Gazette, declare that the seat in council of that member has become vacant.

**94.** Subject to the provisions of this Act, the Secretary of State in Council may, with the concurrence of a majority of votes at a meeting of the Council of India, make rules as to the absence on leave or special duty of persons in the service of the Crown in India, and the terms as to continuance, variation or cessation of pay, salary and allowances on which any such absence may be permitted.

Leave. [1837, ss. 1, 2, 3, 1853, s. 32, 1916, 1st. Sch.]  
Power to make rules as to Indian appointments. [1833, s. 78, 1858, s. 30, 1919; 2nd Sch., Pt. II.]

**95.** (1) The Secretary of State in Council, with the concurrence of a majority of votes at a meeting of the Council of India, may make rules for distributing between the several authorities in India the power of making appointments to and promotions in "military" offices under the Crown in India, and may reinstate "military" officers and

servants suspended or removed by any of those authorities.

(2) Subject to such rules, all appointments to offices and commands in India, and all "military" promotions, which, by law, or under any regulations, usage or custom, are, at the commencement of this Act, made by any authority in India, shall, subject to the qualifications, conditions and restrictions then affecting such appointments and promotions, respectively, continue to be made in India by the like authority.

96. No native of British India, nor any subject of His Majesty resident therein, shall, by reason only of his religion, place of birth, descent, colour, or any of them, be disabled from holding any office under the Crown in India.

No disabilities in respect of religion, colour or place of birth. [1833, s. 87 ; 1914, s. 3.]

96 A. Notwithstanding anything in any other enactment, the Governor-General in Council, with the approval of the Secretary of State in Council, may, by notification, declare that, subject to any conditions or restrictions prescribed in the notification, any named ruler or subject of any state in India shall be eligible for appointment to any civil or military office under the Crown to which a native of British India may be appointed, or any named subject of any state, or any named member of any independent race or

Qualification of rulers and subjects of certain states for office. [1916, s. 3.]

tribe, in territory adjacent to India, shall be eligible for appointment to any such military office.

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## PART VII A.

### THE CIVIL SERVICES IN INDIA.

**96 B.** “(1) Subject to the provisions of this Act and of rules made thereunder, every person in the civil service of the Crown in India holds office during His Majesty’s pleasure, and may be employed in any manner required by a proper authority within the scope of his duty, but no person in that service may be dismissed by any authority subordinate to that by which he was appointed, and the Secretary of State in Council may (except so far as he may provide by rules to the contrary) reinstate any person in that service who has been dismissed.

“If any such person appointed by the Secretary of State in Council thinks himself wronged by an order of an official superior in a governor’s province, and on due application made to that superior does not receive the redress to which he may consider himself entitled, he may, without prejudice to any other right of redress, complain to the governor of the province in order to obtain justice, and the governor is hereby directed to examine such com-

plaint and require such action to be taken thereon as may appear to him to be just and equitable.

“(2) The Secretary of State in Council may make rules for regulating the classification of the civil services in India, the methods of their recruitment, their conditions of service, pay and allowances, and discipline and conduct. Such rules may, to such extent and in respect of such matters as may be prescribed, delegate the power of making rules to the Governor-General in Council or to local governments, or authorise the Indian legislature or local legislatures to make laws regulating the public services :

“Provided that every person appointed before the commencement of the Government of India Act, 1919, by the Secretary of State in Council to the civil service of the Crown in India shall retain all his existing or accruing rights, or shall receive such compensation for the loss of any of them as the Secretary of State in Council may consider just and equitable.

“(3) The right to pensions and the scale and conditions of pensions of all persons in the civil service of the Crown in India appointed by the Secretary of State in Council shall be regulated in accordance with the rules in force at the time of the passing of the Government of India Act, 1919. Any such rules may be varied or added to by the Secretary of State in Council and shall have effect as so varied or added

to, but any such variation or addition shall not adversely affect the pension of any member of the service appointed before the date thereof.

“Nothing in this section or in any rule thereunder shall prejudice the rights to which [37 & 38 Vict., c. 12.] any person may, or may have, become entitled under the provisions in relation to pensions contained in the East India Annuity Funds Act, 1874.

“(4) For the removal of doubts it is hereby declared that all rules or other provisions in operation at the time of the passing of the Government of India Act, 1919 whether made by the Secretary of State in Council or by any other authority, relating to the civil service of the Crown in India were duly made in accordance with the powers in that behalf, and are confirmed, but any such rules or provisions may be revoked, varied, or added to by rules or laws made under this section.”

This Part deals with questions affecting the Public Service on the lines recommended by the Government of India in their Despatch of 5th March (*paras. 43 to 55, pp. 62–72 of Pt II. of this book*) Hitherto the regulation of the services had been dependent in a great measure on executive orders, many of which were uncodified. In order to give effect to the principles laid down in the M. C. Report (*para. 325*) as to safeguarding the position of public servants, the Government of India proposed that the main rights and duties of the services in India should be reduced to statutory form. This section makes provision to this effect. It is contemplated that under the rules to be made for classification of services, three main divisions will be recognised. All-India services, provincial and subordinate. Members of All-India services will continue as at present to be appointed by the Secretary of State in Council, and the conditions of

then service will be regulated by the same authority, which alone will have power to dismiss them. It is contemplated that pensions of provincial services will be secured by legislation to be passed in the Indian Legislature, that power to make rules relating to the provincial and subordinate services will be delegated to local governments, and that eventually local legislatures will regulate these services by Public Service Acts, which will in part take the place of the rules (*Functions Report, para. 70, Despatch of 5th March, paras 52-54*).

"The Committee do not conceal from themselves that the position of the public services in working the new constitutions in the provinces will, in certain circumstances, be difficult. They are of opinion that these services have deserved the admiration and gratitude of the whole Empire. They know that some members of the services regard the wisdom of the proposed changes with grave misgiving, and that some fear that those changes will not tend to the welfare of the Indian masses. They are convinced, however, that the services will accept the changing conditions and the inevitable alteration in their own position, and devote themselves in all loyalty to making a success, so far as in them lies, of the new constitution.

In the provinces, officers serving in a reserved department will be controlled by the Governor in Council, and in a transferred department by the Governor acting with ministers, but in both cases alike the personal concurrence of the Governor should be regarded as essential in the case of all orders of any importance prejudicially affecting the position or prospects of officers appointed by the Secretary of State.

The Committee think that every precaution should be taken to secure to the public servants the career in life to which they looked forward when they were recruited, and they have introduced fresh provisions into this clause to that end. If friction occurs, a re-adjustment of persons and places may often get over the difficulty, and the Governor must always regard it as one of his most important duties to establish a complete understanding between his ministers and the officers through whom they will have to work. But if there are members of the service whose doubts as to the changes to be made are so deeply-rooted that they feel they cannot usefully endeavour to take part in them, then the Committee think it would only be fair to those officers that they should be offered an equivalent career elsewhere, if it is in the power of His Majesty's Government to do so, or, in the last resort, that they should be allowed to retire on

such pension as the Secretary of State in Council may consider suitable to their period of service"—*J. S. C. R.*

*See M. C. R. paras. 323, 325, etc.*

**96C.** “(1) There shall be established in India a public service commission, consisting of not more than five members, of whom one shall be chairman, appointed by the Secretary of State in Council. Each member shall hold office for five years, and may be re-appointed. No member shall be removed before the expiry of his term of office, except by order of the Secretary of State in Council. The qualifications for appointment, and the pay and pension (if any) attaching to the office of chairman and member, shall be prescribed by rules made by the Secretary of State in Council.

“(2) The public service commission shall discharge, in regard to recruitment and control of the public services in India, such functions as may be assigned thereto by rules made by the Secretary of State in Council.”

Provision is made by this section for the appointment of a Public Service Commission which is to deal with matters affecting recruitment and control of the public services in India under rules made by the Secretary of State in Council. The Government of India recommended the appointment of such a Commission for which they are precedents in the Dominions, with a view to securing that the public services should not suffer through being exposed to political influences *G. I. First Reforms. Despatch, 5th March, para. 55, pp. 71-72 : Pt. II, of this book.*

**96D.** “(1) An auditor-general in India shall be appointed by the Secretary of State in Council, and shall hold office during

Financial control. [1919, s. 39-].



His Majesty's pleasure. The Secretary of State in Council shall, by rules, make provision for his pay, powers, duties, and conditions of employment, or for the discharge of his duties in the case of a temporary vacancy or absence from duty.

“(2) Subject to any rules made by the Secretary of State in Council, no office may be added to or withdrawn from the public service, and the emoluments of no post may be varied, except after consultation with such finance authority as may be designated in the rules, being an authority of the province or of the Government of India, according as the post is or is not under the control of a local government.”

This section gives effect to two proposals made by the Government of India in their First Reforms Despatch of March 5, 1919.— (1) that the Auditor-General be given a statutory position in order to secure his independence (*Despatch, Para. 77 ; pp. 100-102 Pt. II. of this book*). (2) that statutory provision be made requiring prior consultation with the Finance Department of the Government concerned before any new post is added to the public service, or the emoluments of any existing post are varied (*Despatch, para. 75 pp. 97-99, Pt. II. of this book*).

**96 E.** “Rules made under this Part of this Act shall not be made except with the concurrence of the majority of votes at a meeting of the Council of India.”

Rules under Part  
VII A 1919 s. 40.

## PART VIII.

## THE INDIAN CIVIL SERVICE.

**97.** (1) The Secretary of State in Council may, with the advice and assistance of the Civil Service Commissioners, make rules for the examination, under the superintendence of those Commissioners, of British subjects and of persons in respect of whom a declaration has been made under "section 96A of this Act" who are desirous of becoming candidates for appointment to the Indian Civil Service.

Rules for admission  
to the Indian Civil Ser-  
vice. [1858, s. 32;  
1914, s. 3.]

(2) The rules shall prescribe the age and qualifications of the candidates, and the subjects of examination.

(2A) The admission to the Indian Civil Service of a British subject who or whose father or mother was not born within His Majesty's dominions shall be subject to such restrictions as the Secretary of State in Council, with the advice and assistance of the Civil Service Commissioners, may think fit to prescribe, and all such restrictions shall be included in the rules.

[1916, s. 4.]

(3) All rules made in pursuance of this section shall be laid before Parliament within fourteen days after the making thereof, or, if Parliament is not then sitting, then within fourteen days after the next meeting of Parliament.

(4) The candidates certified to be entitled under the rules shall be recommended for appointment according to the order of their proficiency as shown by their examination.

(5) Such persons only as are so certified may be appointed or admitted to the Indian Civil Service by the Secretary of State in Council.

(6) Notwithstanding anything in this section the Secretary of State may make appointments to the Indian Civil Service of persons domiciled in India, in accordance with such rules as may be prescribed by the Secretary of State in Council with the concurrence of the majority of votes at a meeting of the Council of India.

Appointments to the  
Indian Civil Service.  
[1919, s. 37 (1).]

"Any rules made under this sub-section shall not have force until they have been laid for thirty days before both Houses of Parliament."

The purpose of sub-section 6 of this section is to give effect to the recommendations of the Public Services Commission and those contained in following paragraph of the M. C. Report in respect of recruitment in India.

"We have not been able to examine the question of the percentage of recruitment to be made in India for any service other than the Indian Civil Service. The Commission recommended that 25 per cent. of the superior posts of that service should be recruited for in India. We consider that changed conditions warrant some increase in that proportion, and we suggest that 33 per cent. of the superior posts should be recruited for in India, and that this percentage should be increased by  $1\frac{1}{2}$  per cent. annually until the periodic commission is appointed which will re-examine the whole subject. We prefer this proposal to the possible alternative of fixing a somewhat higher percentage at once and of making no increase

to it until the periodic commission which we propose has reported. We cannot at present foresee the reorganization that may take place in the Indian Civil Service as a result of new conditions. For this reason we think it unwise to aim at attaining any definite percentages after a specified time. We prefer to fix a percentage applicable to present conditions and to commit ourselves only to a growing proportion, which will be subject to reconsideration and revision by the commission.

“We have dealt only with the Indian Civil Service, but our intention is that there should be in all other services now recruited from England a fixed percentage of recruitment in India increasing annually. The percentage will not be uniform for all services as the particular figures must depend upon their distinctive characters and functions”.—*M. C. R. para. 317.*

**98.** Subject to the provisions of this Act, all vacancies happening in any of the offices reserved to the Indian Civil Service. [1861, c. 54, s. 2.] offices specified or referred to in the Third Schedule to this Act, and all such offices which may be created hereafter, shall be filled from amongst the members of the Indian Civil Service.

**99.** (1) The authorities in India, by whom appointments are made to offices in the Indian Civil Service, may appoint to any such office any person of proved merit and ability domiciled in British India and born of parents habitually resident in India and not established there for temporary purposes only, although the person so appointed has not been admitted to that service in accordance with the foregoing provisions of this Act.

(2) Every such appointment shall be made subject to such rules as may be prescribed by the Gover-

nor-General in Council and sanctioned by the Secretary of State in Council with the concurrence of a majority of votes at a meeting of the Council of India.

(3) The Governor-General in Council may, by resolution, define and limit the qualification of persons who may be appointed under this section, but every resolution made for that purpose shall be subject to the sanction of the Secretary of State in Council, and shall not have force until it has been laid for thirty days before both Houses of Parliament.

**100.** (1) Where it appears to the authority in India by whom an appointment is to be made to any office reserved to members of the Indian Civil Service, that a person not being a member of that service ought, under the special circumstances of the case, to be appointed thereto, the authority may appoint thereto any person who has resided for at least seven years in India and who has, before his appointment, fulfilled all the tests (if any) which would be imposed in the like case on a member of that service.

(2) Every such appointment shall be provisional only, and shall forthwith be reported to the Secretary of State, with the special reasons for making it; and, unless the Secretary of State in Council approves the appointment, with the concurrence of a majority of votes at a meeting of the Council of India, and within twelve

Power to make provisional appointments in certain cases. [1861. c 54, s. 3.]

[1861, c. 54, s. 4.]

months from the date of the appointment intimates such approval to the authority by whom the appointment was made, the appointment shall be cancelled.

## PART IX.

### THE INDIAN HIGH COURTS.

#### Constitution.

**101.** (1) \* The high courts<sup>1</sup> referred to in this Constitution of high courts. Act are the high courts of judicature for the time being established<sup>2</sup> in British India by letters patent<sup>3</sup>.

[1861, c. 104, ss. 2, 16; 1911, c. 18 ss. 1, 3.]

(2) Each high court shall consist of a chief justice and as many other judges as His Majesty may think fit to appoint :

Provided as follows :—

- (i) the Governor-General in Council may appoint persons to act as additional judges of any high court, for such period, not exceeding two years, as may be required ; and the judges so appointed shall, whilst so acting, have all the powers of a judge of the high court appointed by His Majesty under this Act ;
- (ii) the maximum number of judges of a high court, including the chief justice and additional judges, shall be twenty.

(3) A judge of a high court must be—

(a) a barrister of England or Ireland, or a member of the Faculty of advocates  
[1861, c. 104, ss. 2, in Scotland, of not less than five  
16, 19.] years' standing ; or

(b) a member of the Indian Civil Service of  
[1861, c. 104, ss. 2. not less than ten years' standing,  
16.] and having for at least three years  
served as, or exercised the powers of, a district  
judge ; or

(c) a person having held judicial office, not inferior to that of a subordinate judge or a judge of a small cause court, for a period of not less than five years ; or

(d) a person having been a pleader of a high court for a period of not less than ten years.

(4) Provided that not less than one-third of the  
[1861, c. 104, ss. 2, judges of a high court, including  
16 ; 1911, c. 18, s. 3.] the chief justice but excluding additional judges, must be such barristers or advocates as aforesaid, and that not less than one-third must be members of the Indian Civil Service.

(5) The high court for the North-Western Provinces may be styled the high court of judicature at Allahabad, and the high court at Fort William in Bengal is in this Act referred to as the high court at Calcutta.

## § 1. "The High Courts."

1. *Leading stages in the evolution of the Indian Judiciary.*—The Royal Charter of Charles II of the year 1661 gave to the Governor and Council power "to judge all persons belonging to the said Governor and Company or that shall be under them, in all causes, whether civil or criminal, according to the laws of this kingdom, and to execute judgment accordingly."

2. The above provisions of the Charter of 1661 were not, however, carried into effect before 1678. At Madras which was then the chief of the Company's settlements in India, two or more officers of the Company used before 1678 to sit as justices to dispose of petty cases but there was no machinery for dealing with serious crimes. In 1678 the agent and Council at Madras resolved that, under the Charter of 1661, they had power to judge all persons living under them in all cases, whether criminal or civil, according to the English laws, and to execute judgment accordingly and it was determined that the Governor and Council should sit in the chapel in the fort on every Wednesday and Saturday to hear and judge all causes. But this Court was not to supersede the formerly existing justices who were still to hear and decide petty cases.

3. By a Charter of 1683 the King established a Court of Admiralty to be held at such place or places as the Company might direct and to consist of "one person learned in civil law and two assistants" to be appointed by the Company. The first such Court was held at Surat.

4. The Charter of 1687 proceeding from the Company, not from the Crown—which established a municipality—also created a Mayor's Court (consisting of the Mayor and 12 aldermen) which was to be a Court of Record with power to try civil and criminal causes in which an appeal was to lie to "our Supreme Court of Judicature commonly called our Court of Admiralty."

5. In 1726 a Charter was granted establishing or reconstituting municipalities at Madras, Bombay and Calcutta, and setting up or remodelling Mayor's and other Courts at each of these places. At each place the Mayor and Aldermen were to constitute a Mayor's Court with civil jurisdiction, subject to an appeal to the Governor or President in Council, and to a further appeal in more important cases to the King in Council.

6. The constitution of these Courts was amended in 1753 when a Court of Request at each of the said places was established for petty cases. The Charter of 1753 also expressly excepted from the jurisdiction



of the Mayor's Court all suits and actions between Indians only, and directed that the suits and actions should be determined among themselves, unless both parties submitted them to the determination of the Mayor's Courts.

7. The Regulating Act of 1773 established the Supreme Court. This Supreme Court was intended to be an independent and effectual check upon the executive government. The latter was still composed of the Company's servants entirely, but the Supreme Court consisted of Judges appointed by the Crown and it was made a King's Court and not a Company's Court; the Court held jurisdiction over "His Majesty's subjects" in the provinces of Bengal, Behar and Orissa; it consisted of a Chief Justice and (at first) three judges (subsequently reduced by 37 Geo. Ch. 142 sec. 1 to a Chief Justice and two Judges); and was constituted by a Charter framed under the authority of the Regulating Act. The King in Council further retained the right to disallow or alter any rule or regulation framed by the Government of India; and in civil cases an appeal lay to the Privy Council. The intention was to secure to the Crown the supremacy in the whole administration of justice, and to place an effective check upon the affairs of the East India Company.

The arrangement, however, was soon found to be impracticable. The Act established in India two independent and rival powers *viz.*, the Supreme Government, comprising the Governor-General and his Council, and the Supreme Court; the boundaries between them were altogether undefined, one deriving its authority from the Crown, and the other from the Company. The wording of the statute and Charter in regard to the Supreme Court was extremely loose and unsatisfactory; and the immediate result was a conflict of authority which lasted for seven years, and which had the effect of paralysing the executive government and of undermining the whole administration.

The Court issued its writs extensively throughout the country, arrested and brought to Calcutta all persons against whom complaints were lodged—zemindars, farmers and occupiers of land, whatever their rank or consequence in the country. Revenue defaulters were set at liberty under a writ of *habeas corpus*; the criminal administration under the Nawab was declared to be illegal; the mofussil civil courts were held to have no valid jurisdiction; and the Supreme Court, itself modelled upon the Courts of England, introduced the whole system of English law and procedure. The Court exercised large powers independently of the government, often

so as to obstruct it, and had complete control over legislation : such a plan could not but fail and it had to be remodelled by another Act *viz.*, the Amending Act of 1780-81 which, among other things, exempted the Governor-General and Council of Bengal, jointly or severally, from the jurisdiction of the Supreme Court, for anything counselled, ordered or done by them in their public capacity (though this exemption did not apply to orders affecting British subjects). It also empowered the Governor-General and Council to frame regulations for the Provincial Courts of Justice without reference to the Supreme Court. It was under this statute that the so-called "Regulations" were passed. The Court of Directors and the Secretary of State were to be regularly supplied with copies of these regulations which might be disallowed or amended by the King in Council, but were to remain in force unless disallowed within two years.

(8) An Act passed in 1800 founded a Supreme Court of Judicature at Madras on the Bengal pattern with judges appointed by the Crown. Bombay obtained her Supreme Court in 1823.

(9) The Indian High Courts Act of 1861 empowered the Crown to establish, by Letters Patent, High Courts at Calcutta, Madras and Bombay, in which the Supreme Courts, as well as the *Sadr Dewam Adalat* and the *Sadr Nizamut Adalat* were all merged, the jurisdiction and powers of the abolished courts being transferred to the new High Courts. Each of the High Courts was to be composed of a Chief Justice and not more than 15 judges, of whom not less than one-third including the Chief Justice were to be barristers, and not less than one-third were to be members of the Covenanted Civil Service. All the judges were to be appointed by and to hold office during the pleasure of the Crown. The High Courts were expressly given superintendence over, and power to frame rules of practice for all the Courts subject to their appellate jurisdiction. Power was given by the Act to establish another High Court with the same constitution and powers as the High Courts established.

(10) The Indian High Courts Act of 1911 (a) raised the maximum number of judges of a High Court of Judicature in India to twenty ; (b) gave power to His Majesty to establish new High Courts within His Majesty's dominions in India, whether or not included within the limits of local jurisdiction of another High Court, and to make consequential changes altering the jurisdiction of that other High Court ;

and, (c) empowered the Governor-General in Council to appoint temporary additional judges of any High Court for a term not exceeding two years. In exercise of the powers conferred by this Act new High Courts have already been established at Patna and at Lahore for the new Province of Bihar and Orissa and for the Punjab and the number of Judges of the Calcutta High Court was for a time raised to the maximum.

## § 2. "High courts.....established in British India."

At present there are Chartered High Courts established at Calcutta, Bombay, Madras, Allahabad, Patna and at Lahore. Arrangements are in progress for establishing a High Court at Rangoon.

*For Documents relating to the constitution of the Indian Judiciary from 1833 to 1916 see Documents I, pp. 386-430.*

Under Sec. 65 of this Act the Indian Legislature may, with the previous approval of the Secretary of State in Council, abolish any of the High Courts referred to in this section.

## § 3. "Letters patent."

The phrase "Letters Patent" is thus defined by Wharton :—

"Writings of the Sovereign, sealed with the great Seal of England, whereby a person or public company is enabled to do acts or enjoy privileges which he or it could not do or enjoy without such authority. They are so called because they are open with the Seal affixed and are ready to be shown for confirmation of authority thereby given."

The Letters Patent for the High Court of Judicature at Fort William in Bengal, bearing date December 28, 1865 and those for the High Courts of Madras and Bombay are *mutatis mutandis* in exactly the same terms. *For the Letters Patent for the Calcutta High Court see Documents I, pp. 396-411. For the Letters Patent for the Patna High Court (1916) see Documents, I, pp. 415-430.*

The Allahabad High Court was established by Letters Patent dated 17th March, 1866.

## § 4. "Pleader."

In the Civil Procedure Code a "pleader" is defined as "any person entitled to appear and plead for another in Court, and includes an advocate, a vakil and an attorney of a High Court."

The term "pleader" is here used in a much larger than its ordinary sense as a convenient term to designate all persons who are entitled

to *plead* for another in Court. "Pleader, in its ordinary sense is synonymous with "Vakil" (1884) *S I. L. R Bom* 115.

Tenure of office of judges of high courts.

**102.** Every judge of a high court shall hold his office during His Majesty's pleasure.<sup>1</sup>

(2) Any such judge may resign his office, in the case of the high court at Calcutta, to the Governor-General in Council, and in other cases to the local Government.

[1861, c. 104, ss. 4, 16; 1912, s. 1 (1) prov. (a).]

### 1. "During His Majesty's Pleasure."

Appointments to the High Courts of India rest with the Crown and Judges hold office during His Majesty's pleasure "though according to constitutional rule, *de facto*, their tenure is as secure as in Canada, where they may be removed by the Governor-General on a Parliamentary address."

*Tenure during pleasure* is the ordinary tenure of public servants in England, including, those who belong to the permanent civil service, and the service of a member of the Civil Service of India is expressly declared by his covenant to continue during the pleasure of His Majesty. *Tenure during good behaviour* is subject to a few exceptions, confined to persons holding judicial offices. But judges of the Indian High Courts are expressly declared by statutes to hold during pleasure. The difference between the two forms of tenure is that a person holding *during good behaviour* cannot be removed from his office except for such misconduct as would, in the opinion of a Court of Justice, justify his removal; whilst a person *holding during pleasure* can be removed without any reason for his removal being assigned. See *Anson, Law and Custom of the Constitution, Second Edition Pt. II, p. 213*, see also *Willis vs. Gipps*, 6 *State Trials N. S.* 311 (1846), as to removal of judicial officers—*Ilbert*.

**103.** (1) The chief justice of a high court shall have rank and precedence before the other judges of the same court.

Precedence of Judges of high courts. [1861, c. 104, ss. 5, 16.]

(2) All the other judges of a high court shall have rank and precedence according to the seniority of their appointments, unless otherwise provided in their patents.

**104.** (1) The Secretary of State in Council may fix the salaries, allowances, <sup>Salaries etc., of judges of high courts. [1797, s. 2: 1800, ss. 8, 9, 1825, s. 4: 1861, c. 104 ss. 6, 16.]</sup> furloughs, retiring pensions, and (where necessary) expenses for equipment and voyage, of the chief justices and other judges of the several high courts, and may alter them, but any such alteration shall not affect the salary of any judge appointed before the date thereof.

(2) The remuneration fixed for a judge under this section shall commence on his taking upon himself the execution of his office, and shall be the whole profit or advantage which he shall enjoy from his office during his continuance therein.

<sup>[1800, s. 7; 1813, s. 59; 1823, s. 11; 1861, c. 104, ss. 11, 16.]</sup>

(3) If a judge of a high court dies during his voyage to India, or within six months after his arrival there, for the purpose of taking upon himself the execution of his office, the Secretary of State shall pay to his legal personal representatives, out of the revenues of India, such a sum of money as will, with the amount received by or due to him at the time of his death on account of salary, make up the amount of one year's salary.

(1) If a judge of a high court dies while in possession of his office and after the expiration of six months from his arrival in India for the purpose of taking upon himself the execution of his office, the Secretary of State shall pay to his legal personal representatives, out of the revenues of India, over and above the sum due to him at the time of his death, a sum equal to six months' salary.

**105.** (1) On the occurrence of a vacancy in the office of chief justice<sup>1</sup> of a high court, and during any absence of such a chief justice, the Governor-General in Council in the case of the high court at Calcutta, and the local Government in other cases, shall appoint one of the other judges of the same high court to perform the duties of chief justice of the court, until some person has been appointed by His Majesty to the office of chief justice of the court, and has entered on the discharge of the duties of that office, or until the chief justice has returned from his absence, as the case requires.

Provision for vacancy  
in the office of chief  
justice or other judge.  
[1861, c. 104, ss. 7, 16;  
1912, s. 1 (1) prov.  
(a).]

(2) On the occurrence of a vacancy in the office of any other judge<sup>2</sup> of a high court, and during any absence of any such judge, or on the appointment of any such judge to act as chief justice, the Governor-General in Council in the case of the high court at Calcutta, and the local Government in other cases, may appoint a person, with such qualifications as are required in persons to be appointed to the high court,

to act as a judge of the court ; and the person so appointed may sit and perform the duties of a judge of the court, until some person has been appointed by His Majesty to the office of judge of the court, and has entered on the discharge of the duties of the office, or until the absent judge has returned from his absence, or until the Governor-General in Council or the local Government, as the case may be, sees cause to cancel the appointment of the acting judge.

### § 1. "Vacancy in the office of the Chief Justice."

The wording of this sub-section leaves no doubt in one's mind that the person appointed to act for the Chief Justice need not be a Barrister Judge—a qualification that is necessary in the case of a permanent Chief Justice under sec. 101(4) above.

### § 2. "Vacancy in the office of any other Judge."

These words refer to a judge appointed to his office by His Majesty and not a person appointed under the section to act as judge (*Queen Empress vs. Gangaram*, 16A. 136, 152). There is no limit of time mentioned in this section within which the appointment of an Acting Judge is to be made. Such an appointment, therefore, is not invalid because it was not made immediately upon, or within a reasonable time after, the occurrence of the vacancy which it supplied. (*Balwant Singh vs. Rani Kishori*, 1897, 20A. 267, 293.)

### Jurisdiction.

106. (1) The several high courts are courts of record and have such jurisdiction<sup>1</sup>, original and appellate, including admiralty jurisdiction in respect of offences committed on the high seas, and all such powers and authority over or in relation to the administration of justice,

Jurisdiction of high courts. [1772, ss. 13, 14 ; 1780, s. 17 ; 1793 s. 156 ; 1797, ss. 11, 13 ; 1800, ss. 2, 5, 20 ; 1823, ss. 7, 17 ; 1861, c. 104, ss. 9, 11, 16.]

including power to appoint clerks and other ministerial officers of the court, and power to make rules for regulating the practice of the court, as are vested in them by letters patent, and, subject to the provisions of any such letters patent, all such jurisdiction, powers and authority as are vested in those courts respectively at the commencement of this Act.

(1A) The letters patent establishing, or vesting jurisdiction, powers or authority in  
[1916, 1st Sch.] a high court may be amended from time to time by His Majesty by further letters patent.

(2) The high courts have not and may not exercise any original jurisdiction in any  
[1780, s. 8; 1797, s. 11, 3rd proviso, 1800, s. 2; 1823, s. 7; 1861, c. 104, s. 11, 16.] matter concerning the revenue, or concerning any act ordered or done in the collection thereof according to the usage and practice of the country or the law for the time being in force.

### § 1. "Jurisdiction."

"Jurisdiction" is a content of the judicial power; it is in fact the power of a Court to entertain an action, suit, or other proceeding.

This section confers upon the High Courts general appellate jurisdiction in all matters decided by the Civil and Criminal Courts within the limits assigned by the several Letters Patent.

The Original jurisdiction of the High Courts is limited by the Letters Patent to matters in which the subject-matter of the suit, or the character of the parties, fall under certain specified heads; but the appellate jurisdiction has no such limits.

Sec. 10 of the Indian High Courts Act of 1861 lays down:—"Until the Crown shall otherwise provide under the powers of this Act, all jurisdiction now exercised by the Supreme Courts of Calcutta, Madras and Bombay respectively over inhabitants of such parts of India as may



not be comprised within the local limits of the Letters Patent to be issued under this Act establishing High Courts at Fort William, Madras and Bombay, shall be exercised by such High Court separately."

Provisions as to original, appellate and admiralty jurisdiction are made in the different Letters Patents creating High Courts. *See Documents, Vol. I, p.p. 396-411 and 415-430.*

# **107. Each of the high courts has superinten-**

Powers of high court with respect to subordinate courts. [1772, s. 17; 1797, s. 11, 1st proviso.]

dence over all courts<sup>1</sup> for the time being subject to its appellate jurisdiction, and may do any of the fol-

lowing things, that is to say,—

- (a) call for returns ;
- (b) direct the transfer of any suit or appeal from any such court to any other court of equal or superior jurisdiction ;
- (c) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts ;
- (d) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts ; and
- (e) settle tables of fees to be allowed to the sheriff, attorneys, and all clerks and officers of courts :

Provided that such rules, forms and tables shall not be inconsistent with the provisions of any law for the time being in force, and shall require the previous approval, in the case of the high court at Calcutta, of the Governor-General in Council, and in other cases of the local Government.

**1. "Has superintendence over all courts."**

The High Courts under this section have not only judicial, but also administrative power. In the exercise of its power of superintendence a High Court may direct a Subordinate Court to do its duty, and this power is not limited to cases in which the Subordinate Judge declines to hear or determine a suit or application within his jurisdiction. But a High Court is not competent, in the exercise of this power, to interfere with and set right the orders of a Subordinate Court on the ground that the order of the Subordinate Court has proceeded on an error of law or an error of fact; *See 1 A. 101; 9 A. 104; 18A. 4; 21 A. 181; 26 C. 74, 76; 41 C. 876, 885.* A High Court in the exercise of its superintending power will not ordinarily interfere, except in cases of grave and otherwise irreparable injustice *31 B. 138. See Mullali's Civil Procedure Code pp. 906-907.*

*See also sec 15 of the Indian High Courts Act, 1861.*

**108. (1) Each high court may by its own rules**

Exercise of jurisdiction by single judges or division courts, [1861, c. 104, ss. 13, 16.]

provide as it thinks fit for the exercise, by one or more judges, or by division courts constituted by two or more judges, of the high court, of the original and appellate jurisdiction vested in the court.

**(2) The chief justice of each high court shall**

[1861, c. 104, ss. 14, 16.]

determine what judge in each case is to sit alone, and what judges of the court, whether with or without the chief justice, are to constitute the several division courts.

*See secs. 13, and 14 of the Indian High Courts Act, 1861 printed at pp. 394 and 395 of Documents Vol. I.*

**109. (1) The Governor-General in Council may,**

Power for Governor-General in Council to alter local limits of jurisdiction of high courts. [1865, c. 15, s. 3.]

by order, transfer any territory or place from the jurisdiction of one to the jurisdiction of any other of the high courts, and authorise any high

court to exercise all or any portion of its jurisdiction in any part of British India not included within the limits for which the high court was established, and also to exercise any such jurisdiction in respect of any British subject for the time being within any part of India outside British India.

(2) The Governor-General in Council shall transmit to the Secretary of State an authentic copy of every order made under this section.

(3) His Majesty may signify, through the Secretary of State in Council, his disallowance of any such order, and such disallowance shall make void and annul the order as from the day on which the governor-general notifies that he has received intimation of the disallowance, but no act done by any high court before such notification shall be deemed invalid by reason only of such disallowance.

*See sec. 3 of the Indian High Courts Act 1865 printed at page 412 of Documents, Vol I.*

**110.** (1) The governor-general, each governor lieutenant-governor and chief commissioner, and each of the members of the executive council of the governor-general or of a governor or lieutenant-governor "and a minister appointed under this Act" shall

Exemption from jurisdiction of high court.  
[1772, ss. 15, 17: 1780, s. 1: 1797, s. 11, 1st. and 2nd. provisos: 1800, s. 3: 1823, s. 7, prov.: 1861, c. 104, s. 11, 16: 1912 s. 1 (1): 1919, 2nd Sch. Pt. I.]

not—

(a) be subject to the original jurisdiction of any high court by reason of anything  
[1780, s. 1 ; 1707, s. 11, 2nd proviso] counselled, ordered or done by any of them in his public capacity only; nor

(b) be liable to be arrested or imprisoned in any suit or proceeding in any high court  
[1861, c. 104, ss. 15, 16; 1912, s. 16, prov. (a).] acting in the exercise of its original jurisdiction; nor

(c) be subject to the original criminal jurisdiction of any high court in respect of any  
[1772, s. 15.] offence not being treason or felony.

(2) The exemption under this section from liability to arrest and imprisonment shall extend also to the the chief justices and other judges of the several high courts.

**111.** The order in writing of the Governor-General in Council for any act shall, in any proceeding, civil or criminal, in any high court acting in the exercise of its original jurisdiction, be a full justification of the act, except so far as the order extends to any European British subject; but nothing in this section shall exempt the governor-general, or any member of his executive council, or any person acting under their orders, from any proceedings in respect of any such act before any competent Court in England.

Written order by governor-general justification for act in any courts in India. [1780 ss. 2, 3, 4; 1861, c. 104, ss. 11, 16.]

*See sec 39 of the East India Company Act 1773 and Pitt's speech on the India Bill of 1773 printed at pages 26 and 55—58 of Documents Vol. I respectively. See also Secs 127, 128 and 129 of this Act*

### Law to be administered.

**112.** The high courts at Calcutta, Madras and Bombay, in the exercise of their original jurisdiction in suits against inhabitants of Calcutta, Madras or Bombay, as the case may be, shall, in matters of inheritance and succession to lands, rents and goods, and in matters of contract and dealing between party and party, when both parties are subject to the same personal law or custom having the force of law, decide according to that personal law or custom, and when the parties are subject to different personal laws or customs having the force of law, decide according to the law or custom to which the defendant is subject.

This section reproduces the enactments marginally noted. When the East India Company took the entire management of the territories in India they adopted the plan of Warren Hastings and preserved the laws of the Natives of India to settle disputes among them. The twenty-third rule provided that Moulavies or Brahmmins should respectively attend Courts to expound the law and assist in passing the decree. Subsequently when Parliament invested the Governor-General and Council with the power of making regulations, the provisions and the exact words of the aforesaid twenty-third rule were introduced into the first Regulation passed on April 17, 1780 and enacted by the Bengal Government for the administration of justice. By sec. 27 of this regulation it was enacted "that in all suits regarding inheritance, marriage and caste, and other religious usages or institutions, the laws of the Koran with respect to Mahomedans and those of the *shaster* with respect to the *Gentoos*,

shall be invariably adhered to. This section was re-enacted in the following year in the revised code, with the addition of the word "succession." Sec. 17 of the Act of 1781 constitutes the first express recognition of Warren Hastings's rule in the English Statute Law. Enactments to the same effect have since been introduced into numerous subsequent English statutes and Indian Acts.—See clauses 19 and 20 of the Charter of 1865 of the Bengal High Court, the corresponding clauses of the Madras and Bombay Charters, clauses 13 and 14 of the Charters of the North Western Provinces High Court and clauses 13 and 14 of the Charter of the Patna High Court.

Sec. 2 of the Indian Contract Act (Act IV of 1872) contains a saving for any statute, Act or regulation not thereby expressly repealed. This section has been held to include the enactment reproduced by this section, under which matters of contract are, within the Presidency towns, but not elsewhere, directed to be regulated by the personal law of the party.

*See. 14 C. 781*—where it was held that custom of *dandapat* is still in force in Calcutta. If however any law or custom is already inconsistent with the terms of the Contract Act, it would be held to be repealed; *See Madhab Chundra vs. Raycoomar*, 14 B. L. R. 76.

The leading case on the extent to which English law has been introduced into Indian law is *Mayor of Lyons vs. East India Company* reported in 1 *Moor's P. C.* 176.

### Additional High Courts.

**113.** His Majesty may, if he sees fit, by letters

Power to establish additional high courts.  
[1861, c. 104, s. 16;  
1911, c. 18, s. 2.]

patent, establish a high court of judicature in any territory in British India, whether or not included within the limits of the local jurisdiction of another high court, and confer on any high court so established any such jurisdiction, powers and authority as are vested in or may be conferred on any high court existing at the commencement of this Act; and,

where a high court is so established in any area included within the limits of the local jurisdiction of another high court, His Majesty may, by letters patent, alter those limits, and make such incidental, consequential and supplemental provisions as may appear to be necessary by reason of the alteration.

### Advocate-General.

**114.** (1) His Majesty may, by warrant under His Royal Sign Manual, appoint an Advocate-General for each of the presidencies of Bengal, Madras and Bombay.

Appointment and powers of advocate-general.  
[1858, s. 29]

(2) The Advocate-General for each of those presidencies may take on behalf of His Majesty such proceedings as may be taken by His Majesty's Attorney-General in England.

[1813, s. 111, 1861, c. 104, s. 11.]

(3) On the occurrence of a vacancy in the office of Advocate-General, or during any absence or deputation of an Advocate-General, the Governor-General in Council in the case of Bengal, and the local government in other cases, may appoint a person to act as Advocate-General; and the person so appointed may exercise the powers of an Advocate-General until some person has been appointed by His Majesty to the office and has entered on the discharge on his duties, or until the Advocate-General has returned from his absence

[1916 1st Sch.]

or deputation, as the case may be, or until the Governor-General in Council or the local government, as the case may be, cancels the acting appointment.

## PART X.

### ECCLESIASTICAL ESTABLISHMENT.

**115.** (1) The bishops<sup>1</sup> of Calcutta, Madras and Bombay have and may exercise within their respective dioceses such episcopal functions, and such ecclesiastical jurisdiction for the superintendence and good government of the ministers of the Church of England therein, as his Majesty may by letters patent direct.

<sup>1</sup>Jurisdiction of Indian bishops. [1813, ss. 51, 52; 1833, ss. 93, 94; 1919, 2nd Sch., Pt. III.]

“His Majesty may also by letters patent make such provision as may be deemed expedient for the exercise of the episcopal functions and ecclesiastical jurisdiction of the bishop during a vacancy of any of the said Sees or the absence of the bishop thereof.”

(2) The Bishop of Calcutta is the Metropolitan Bishop in India, subject nevertheless to the general superintendence and revision of the Archbishop of Canterbury.

[1833, s. 94; 1919, 2nd Sch., Pt. III.]

“And as metropolitan shall have, enjoy, and exercise such ecclesiastical jurisdiction and functions as His Majesty may by letters patent direct. His



Majesty may also by letters patent make such provision as may be deemed expedient for the exercise of such jurisdiction and functions during a vacancy of the See of Calcutta or the absence of the Bishop."

(3) Each of the Bishops of Madras and Bombay is subject to the Bishop of Calcutta [1833, s. 93.] as such Metropolitan, and must at the time of his appointment to his bishopric, or at the time of his consecration as bishop, take an oath of obedience to the Bishop of Calcutta, in such manner as His Majesty, by letters patent, may be pleased to direct.

(4) His Majesty may, by letters patent, vary the limits of the dioceses of Calcutta, Madras and Bombay.

(5) Nothing in this Act or in any such letters patent as aforesaid shall prevent any person who is or has been bishop of any diocese in India from performing episcopal functions, not extending to the exercise of jurisdiction, in any diocese or reputed diocese at the request of the bishop thereof.

### 1. "Bishops"

"A Bishop is the chief of the clergy in his diocese or jurisdiction in England, Wales or Ireland. A Bishop is elected by the King's license to elect the person named by the King, accompanied by a letter missive addressed to the Dean and Chapter, and if they fail to make election in 12 days the King by letters patent may nominate whom he pleases. The Bishops are the Lords Spiritual in Parliament. A Bishop has three powers (1) a power of ordination gained on his consecration,

by which he confers orders, etc., in any place throughout the world ; (2) a power of jurisdiction throughout his See or his bishopric ; (3) a power of administration and government of the revenues thereof, gained on confirmation. He has also a Consistory Court ; he visits and superintends the clergy of his diocese — *Wharton*.

As to Indian Bishops see 37 and 38 vict. c. 77 sec. 13

The bishops of Calcutta, Madras and Bombay, are the only Indian bishops who are referred to in the Act relating to India. Bishops have also been appointed, under letters patent or otherwise, for Chota Nagpur, Lahore, Lucknow, Rangoon, Tennevelly and Travancore

### **116.** *Repealed by the Government of India Amendment Act, 1916.*

**117.** If any person under the degree of bishop is appointed to the bishopric of Calcutta, Madras or Bombay, being at the time of his appointment resident in India, the Archbishop of Canterbury, if so required to do by His Majesty by letters patent, may issue a commission under his hand and seal, directed to the two remaining bishops, authorising and charging them to perform all requisite ceremonies for the consecration of the person so to be appointed.

Consecration of person resident in India appointed to bishopric. [1833, s. 99].

**118.** (1) The bishops of Calcutta, Madras and Bombay are appointed by His Majesty by letters patent “and the archdeacons of those dioceses by their respective diocesan bishops,” and there may be paid to them, or to any of them, out of the revenues of India, such salaries and allowances as may be fixed

Salaries and allowances of bishops and archdeacons. [1813, s. 49 ; 1833, ss. 89, 101 ; 1842, ss. 1, 3, 4 ; 1871, c. 62, s. 1, 1st prov. ; 1880, ss. 2, 3, 4 sch. 1 ; 1919, 2nd. sch., Pt. III.]

by the Secretary of State in Council ; but any power of alteration under this enactment shall not be exercised so as to impose any additional charge on the revenues of India.

(2) The remuneration fixed for a bishop or arch-deacon under this section shall  
[1813, s. 50 ; 1833, s. 90.] commence on his taking upon himself the execution of his office, and be the whole profit or advantage which he shall enjoy from his office during his continuance therein, and continue so long as he exercises the functions of his office.

(3) There shall be paid out of the revenues of India the expenses of visitations of  
[1823, s. 5 ; 1833, s. 100.] the said bishops, but no greater sum may be issued on account of those expenses than is allowed by the Secretary of State in Council.

**119.** (1) If the Bishop of Calcutta dies during his voyage to India for the purpose  
Payments to representatives of bishops. [1825, s. 5 ; 1833, s. 97.] of taking upon himself the execution of his office, or if the Bishop of Calcutta, Madras or Bombay dies within six months after his arrival there for that purpose, the Secretary of State shall pay to his legal personal representatives, out of the revenues of India, such a sum of money as will, with the amount received by or due to him at the time of his death on account of salary, make up the amount of one year's salary.

(2) If the Bishop of Calcutta, Madras or Bombay dies while in possession of his office and after

the expiration of six months from his arrival in India for the purpose of taking upon himself the execution of his office, the Secretary of State shall pay to his legal personal representatives, out of the revenues of India, over and above the sum due to him at the time of his death, a sum equal to six months' salary.

**120.** His Majesty may, by warrant under the Royal Sign Manual, countersigned by the Secretary of State grant, out of the revenues of India, to any Bishop of Calcutta a pension not exceeding fifteen hundred pounds per annum if he has resided in India as Bishop of Calcutta, Madras or Bombay or archdeacon for ten years, or one thousand pounds per annum if he has resided in India as Bishop of Calcutta, Madras or Bombay for seven years, or seven hundred and fifty pounds per annum if he has resided in India as Bishop of Calcutta, Madras or Bombay for five years, or to any Bishop of Madras or Bombay a pension not exceeding eight hundred pounds per annum, if he has resided in India as such bishop for fifteen years.

**121.** His Majesty may make such rules as to the leave of absence of the Bishops of Calcutta, Madras and Bombay on furlough or medical certificate as seem to His Majesty expedient.

Pensions [1823, s. 3, 1825, s. 15; 1833 ss 96, 98.]

Furlough rules. [1842 ss. 1, 2, 3; 1871, c. 62.]

**122.** (1) Two members of the establishment of chaplains maintained in each of the presidencies of Bengal, Madras and Bombay must always be ministers of the Church of Scotland, and shall be entitled to have, out of the revenues of India, such salary as is from time to time allotted to the military chaplains in the several presidencies.

(2) The ministers so appointed chaplains must be ordained and inducted by the presbytery of Edinburgh according to the forms and solemnities used in the Church of Scotland, and shall be subject to the spiritual and ecclesiastical jurisdiction in all things of the presbytery of Edinburgh, whose judgments shall be subject to dissent, protest and appeal to the Provincial Synod of Lothian and Tweeddale and to the General Assembly of the Church of Scotland.

**123.** Nothing in this Act shall prevent the Governor-General in Council from granting, with the sanction of the Secretary of State in Council, to any sect, persuasion or community of Christians not being of the Church of England or Church of Scotland, such sums of money as may be expedient for the purpose of instruction or for the maintenance of places of worship.

Saving as to grants to  
Christians. [1833. s.  
102 prov.]

## PART XI

## OFFENCES, PROCEDURE AND PENALTIES.

Certain acts to be misdemeanours. [1770, s. 4; 1772, s. 24; 1793, s. 62; 1833, s. 80.]

**124.** If any person holding office under the Crown in India does any of the following things, that is to say,—

(1) if he oppresses any British subject within his jurisdiction or in the exercise of his authority; or  
Oppression. [1770, s. 4]

(2) if (except in case of necessity, the burden of proving which shall be on him) he wilfully disobeys, or wilfully omits, forbears or neglects to execute, any orders or instructions of the Secretary of State; or  
Wilful disobedience. [1793, s. 65, 1833, s. 80.]

(3) if he is guilty of any wilful breach of the trust and duty of his office; or  
Breach of duty. [1793, s. 96; 1833, s. 80.]

(4) if, being the Governor-General, or a governor, lieutenant-governor or chief commissioner, or a member of the executive council of the Governor-General or of a governor or lieutenant-governor “or being a Minister appointed under this Act,” or being a person employed or concerned in the collection of revenue or the administration of justice, he is concerned in, or has any dealings or transactions by way of, trade or business in any part of India, for the benefit either of himself or of any other person other-

wise than as a shareholder in any joint stock company or trading corporation ; or

(5) if he demands, accepts or receives, by himself  
Receiving presents. [1772, s. 23; 1861, c. 104, s. 11.] or another, in the discharge of his office, any gift, gratuity or reward, pecuniary or otherwise, or any promise of the same, except in accordance with such rules as may be made by the Secretary of State as to the receipt of presents, and except in the case of fees paid or payable to barristers, physicians, surgeons and chaplains in the way of their respective professions,

he shall be guilty of a misdemeanour<sup>1</sup>; and if he  
[1793, ss. 62, 63, 1833, ss. 76, 80.] is convicted of having demanded, accepted or received any such gift, gratuity or reward, the same, or the full value thereof, shall be forfeited to the Crown, and the court may order that the gift, gratuity or reward, or any part thereof, be restored to the person who gave it, or be given to the prosecutor or informer, and that the whole or any part of any fine imposed on the offender be paid or given to the prosecutor or informer, as the court may direct.

“Provided that notwithstanding anything in this  
[1919, s. 47.] Act, if any member of the Governor-General’s Executive Council or any member of any local government was at the time of his appointment concerned or engaged in any trade or business, he may, during the term of his office, with the sanction in writing of the Governor-General,

or, in the case of ministers, of the governor of the province, and in any case subject to such general conditions and restrictions as the Governor-General in Council may prescribe, retain his concern or interest in that trade or business, but shall not, during that term, take part in the direction or management of that trade or business."

The proviso to sec. 124 (5) is not based on any recommendation of the M. C. Report, but attention had been given for some time past to the question of the possible relaxation of the stringent restrictions contained in section 124 (4) of the Act, on dealings and transactions by way of trade or business on the part of certain specified officials, and the urgency of the matter was accentuated by the proposal to increase the number of non-official members of executive councils. The Act as it stood involved, if strictly interpreted, the consequence that the great landholder or a man of large commercial interests, from which classes some appointments of non-officials would necessarily be made, would be required to surrender his interest in his estates, possessions, and trade for the brief period of his time of office. This would clearly be an impossible obligation to impose or to observe as a condition of offering or accepting the appointment, and a decision to legislate in this sense on the first opportunity had been previously recorded by the Secretary of State in Council. Such a relaxation of the statute is required in order to meet a situation not contemplated when these restrictions were originally imposed, more than than a hundred years ago.

*Misdemeanour*—is "a crime less than felony. Obtaining money by false pretence, endeavouring to conceal a birth and fraudulently obtaining property on credit and not having paid for it within 4 months of bankruptcy, are misdemeanours by statute; and any attempt to commit a felony or misdemeanour, whether the crime attempted be so by statute or Common Law (Arch. Cr. Pl. 2), any disobedience of a statute [*Reg. v. Hall* (1891) 1 Q. B. 747]; any incitement of another to commit crime (*Reg. v. Gregory*, L. R. 1, C. C. R. 77); sale of provisions unfit for food (*R. v. Dixon*, 3, M. and S. 11); public nuisances and very many other offences are misdemeanours at Common Law."



To statutory misdemeanours, no express punishment is attached. Common Law misdemeanours are punishable by fine or imprisonment, or both (without hard labour), and by being put under recognizances to keep the peace and be of good behaviour at the discretion of the Court — Steph. Dig. Crim. Law., Art. 23 citing *Reg. v. Dunn* (1848) 12 Q. B. 1041.

If a statute declares that any person doing a certain thing shall be guilty of a misdemeanour, and does not affix any punishment, the effect is that the person is liable upon conviction on indictment to fine or imprisonment (without hard labour), or both, at the discretion of the Court.

Any greater felony includes a less felony, so that e.g. on an indictment for murder there may be a conviction of manslaughter but no felony includes a misdemeanour, so that at Common Law no person on an indictment for felony could be convicted of a misdemeanour; but various statutory enactments, e.g. the Criminal Procedure Act, 1851, 14 & 15 Vict. c. 100 s. 9, by which a person indicted for any felony may be found not guilty of the felony, but guilty of the attempt to commit it have abrogated the Common Law Rule. Consult Archbold's Crim. Plead., 22nd Ed. (1900).—*Wharton*.

**125.** (1) If any European British subject, without the previous consent in writing of the Secretary of State in Council or of the Governor-General in Council or of a local Government, by himself or another,—

Loans to Princes or  
Chiefs. [1797 s. 28;  
1912, s. 1 (1).]

- (a) lends any money or other valuable thing to any prince or chief in India; or
- (b) is concerned in lending money to, or raising or procuring money for, any such prince or chief, or becomes security for the repayment of any such money; or
- (c) lends any money or other valuable thing to any other person for the purpose of being lent to any such prince or chief; or

(1) takes, holds, or is concerned in any bond, note or other security granted by any such prince or chief for the repayment of any loan or money hereinbefore referred to, he shall be guilty of a misdemeanour.

(2) Every bond, note, or security for money, of what kind or nature soever, taken, held or enjoyed, either directly or indirectly, for the use and benefit of any European British subject, contrary to the intent of this section, shall be void.

**126.** (1) If any person carries on, mediately or immediately, any illicit correspondence, dangerous to the peace or safety of any part of British India, with any prince, chief, land-holder or other person having authority in India, or with the commander, governor, or president of any foreign European settlement in India, or any correspondence, contrary to the rules and orders of the Secretary of State or of the Governor-General in Council or a Governor in Council, he shall be guilty of a misdemeanour ; and the Governor-General or Governor may issue a warrant for securing and detaining in custody any person suspected of carrying on any such correspondence.

Carrying on dangerous  
correspondence [1793,  
ss. 45, 46, 140 ; 1912,  
s. 1 (1).]

(2) If, on examination taken on oath in writing of any credible witness before the Governor-General in Council or the Governor in Council, there appear reasonable grounds for the charge, the Governor-General or Governor

[1793, ss. 45, 46 ; 1912,  
s. 1 (1).]

may commit the person suspected or accused to safe custody, and shall within a reasonable time, not exceeding five days, cause to be delivered to him a copy of the charge on which he is committed.

(3) The person charged may deliver his defence in writing, with a list of such witnesses as he may desire to be examined in support thereof.

(4) The witnesses in support of the charge and of the defence shall be examined and cross-examined on oath in the presence of the person charged, and their depositions and examination shall be taken down in writing.

(5) If, notwithstanding the defence, there appear to the Governor-General in Council or Governor in Council reasonable grounds for the charge and for continuing the confinement, the person charged shall remain in custody until he is brought to trial in India or sent to England for trial.

(6) All such examinations and proceedings, or attested copies thereof under the seal of the high court, shall be sent to the Secretary of State as soon as may be, in order to their being produced in evidence on the trial of the person charged in the event of his being sent for trial to England.

(7) If any such person is to be sent to England, the Governor-General or Governor, as the case may be, shall cause him to be so sent at the first convenient opportunity, unless he is disabled by illness from

undertaking the voyage, in which case he shall be so sent as soon as his state of health will safely admit thereof.

(8) The examinations and proceedings transmitted in pursuance of this section shall be received as evidence in all courts of law, subject to any just exceptions as to the competency of the witnesses.

**127.** (1) If any person holding office under the Crown in India commits any offence under this Act, or any offence against any person within his jurisdiction or subject to his authority, the offence may, without prejudice to any other jurisdiction, be inquired of, heard, tried and determined before His Majesty's High Court of Justice, and be dealt with as if committed in the county of Middlesex.

Prosecution of offences in England [1770, s. 4; 1772, s. 39; 1793, ss. 140, 141.]

(2) Every British subject shall be amenable to all courts of justice in the United Kingdom, of competent jurisdiction to try offences committed in India, for any offence committed within India and outside British India, as if the offence had been committed within British India.

**128.** Every prosecution before a high court in British India in respect of any offence referred to in the last foregoing section must be commenced within six years after the commission of the offence.

Limitation for prosecutions in British India. [1793, s. 141; 1861, c. 104, ss. 11, 16.]

**129.** If any person commits any offence referred to in this Act he shall be liable to such fine or imprisonment or both as the court thinks fit, and shall be liable, at the discretion of the court, to be adjudged to be incapable of serving the Crown in India in any office, civil or military; and, if he is convicted in British India by a high court, the court may order that he be sent to Great Britain.

Penalties. [1770, s. 4, 1772, s. 39, 1793, s. 140.]

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## PART XII.

### SUPPLEMENTAL.

#### Power to make rules.

**129A.** “(1) Where any matter is required to be prescribed or regulated by rules under this Act and no special provision is made as to the authority by whom the rules are to be made, the rules shall be made by the Governor-General in Council, with the sanction of the Secretary of State in Council and shall not be subject to repeal or alteration by the Indian legislature or by any local legislature.

“(2) Any rules made under this Act may be so framed as to make different provision for different provinces.

“(3) Any rules to which sub-section (1) of this section applies shall be laid before both Houses of Parliament as soon as may be after they are made,

and, if an Address is presented to His Majesty by either House of Parliament within the next thirty days on which that House has sat after the rules are laid before it praying that the rules or any of them may be annulled, His Majesty in Council may annul the rules or any of them, and those rules shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder :

“Provided that the Secretary of State may direct that any rules to which this section applies shall be laid in draft before both Houses of Parliament, and in such case the rules shall not be made unless both Houses by resolution approve the draft either without modification or addition, or with modifications or additions to which both Houses agree, but, upon such approval being given, the rules may be made in the form in which they have been approved, and such rules on being so made shall be of full force and effect, and shall not require to be further laid before Parliament.”

This section deals with the making of rules under the Act. The Reforms Act of 1919 outlines the main features of the constitutional changes but leaves these changes to be worked out in detail in the form of rules. In the absence of special provision rules are to be made by the Governor-General in Council, subject to the sanction of the Secretary of State in Council. Sub-section (3) makes provision enabling either House of Parliament to present an address praying for the annulment of Rules by His Majesty in Council. The Rules may also be required to be laid in draft before both Houses of Parliament before they are made.

*See Lord Sinha's Speech, p. 578 of Part II of this book.*

**Repeal of Acts.**

**130.** The Acts specified in the Fourth Schedule to this Act are hereby repealed, to the extent mentioned in the third column of that Schedule :

Repeal.

Provided that this repeal shall not affect—

(a) the validity of any law, charter, letters patent, Order in Council, warrant, proclamation, notification, rule, resolution, order, regulation, direction or contract made, or form prescribed, or table settled, under any enactment hereby repealed and in force at the commencement of this Act, or

(b) the validity of any appointment, or any grant or appropriation of money or property, made under any enactment hereby repealed, or

(c) the tenure of office, conditions of service, terms of remuneration or right to pension of any officer appointed before the commencement of this Act.

[1858, ss. 13, 18, 56,  
58; 1860. c. 100, s. 1;  
1869, c. 97, s. 2.]

“Any reference in any enactment, whether an Act of Parliament or made by any authority in British India, or in any rules, regulations or orders made under any such enactment, or in any letters patent or other document, to any enactment repealed by this Act, shall

[1919 s. 47, (3) (4).]

for all purposes be construed as references to this Act or to the corresponding provision thereof.

“Any reference in any enactment in force in India, whether an Act of Parliament or made by any authority in British India, or in any rules, regulations, or orders made under any such enactment, or in any letters patent or other document, to any Indian legislative authority, shall for all purposes be construed as references to the corresponding authority constituted by this Act.”

### Savings.

**131.** (1) Nothing in this Act shall derogate from any rights vested in His Majesty, or any powers of the Secretary of State in Council in relation to the government of India.

Savings as to certain rights and powers,  
[1861, c. 67, s. 52]

(2) Nothing in this Act shall affect the power of Parliament to control the proceedings of the Governor-General in Council, or to repeal or alter any law made by any authority in British India, or to legislate for British India and the inhabitants thereof.

[1833, s. 51.]

(3) Nothing in this Act shall affect the power of the “Indian Legislature” to repeal or alter any of the provisions mentioned in the Fifth Schedule to this Act, or the validity of any previous exercise of this power.

[1861, c. 67, s. 22, proviso; 1861, c. 104, ss. 9, 11, 13, 1865, c. 15, s. 6, 1919, 2nd Sch., Pt. II]



**132.** All treaties made by the East India Company, so far as they are in force at the commencement of this Act, are binding on His Majesty, and all contracts made and liabilities incurred by the East India Company, may, so far as they are outstanding at the commencement of this Act, be enforced by and against the Secretary of State in Council.

Treaties, contracts  
and liabilities of East  
India Company [1858,  
s. 67.]

**133.** All orders, regulations and directions lawfully made or given by the Court of Directors of the East India Company, or by the Commissioners for the Affairs of India, are, so far as they are in force at the commencement of this Act, deemed to be orders, rules and directions made or given by the Secretary of State under this Act.

Orders of East India  
Company. [1858, s. 59.]

## DEFINITIONS AND SHORT TITLE.

Definitions.

**134.** In this Act, unless the context otherwise requires,—

(1) “Governor-General in Council” means the Governor-General in executive council ;

[1833, s. 39 ; 1861, c.  
67, s. 53.]

[1833, s. 56 ; 1861,  
c. 67, s. 53 ; 1912, s. 1  
(1.)]

(2) “Governor in Council” means a governor in executive

council ;

(3) “Lieutenant-Governor in Council” means a lieutenant-governor in executive council ;

[1909, s. 3 (3).]

(4) "Local government" means, in the case of a governor's province, governor in council or the governor acting with ministers (as the case may require), and, in the case of a province other than a governor's province, a lieutenant-governor in council, lieutenant-governor or chief commissioner.

"Local legislative council" includes the legislative council in any governor's province, and any other legislative council constituted in accordance with this Act.

"Local legislature" means, in the case of a governor's province, the governor and the legislative council of the province, and, in the case of any other province, the lieutenant-governor or chief commissioner in legislative council."

(5) "Office" includes place and employment ;  
 [1892, s. 6] (6) "province" includes a presidency ; and

(7) references to rules made under this Act include rules or regulations made under any enactment hereby repealed, until they are altered under this Act.

"The expressions 'official' and 'non-official,' where used in relation to any person, mean respectively a person who is or is not in the civil or military service of the Crown in India" :  
 Definition of official [1919, s. 46]

“Provided that rules under this Act may provide for the holders of such offices as may be specified in the rules not being treated for the purposes of this Act, or any of them, as officials.”

*See notes under sec. 63E for the Non-Official Definition rules.* These rules came into force on and from 1st October, 1920.

*See Notification published in the Gazette of India, Simla, dated the 30th September, 1920.*

[1919, 2nd Sch., Pt. 11.] **135.** “This Act may be cited as the Government of India Act.”

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## SCHEDULES.

## FIRST SCHEDULE.

## NUMBER OF MEMBERS OF LEGISLATIVE COUNCILS

Legislative Council	Number of Members.
Madras . . . . .	118
Bombay . . . . .	111
Bengal . . . . .	125
United Provinces . . . . .	118
Punjab . . . . .	83
Behar and Oussa . . . . .	98
Central Provinces . . . . .	70
Assam . . . . .	53

## SECOND SCHEDULE.

## OFFICIAL SALARIES, &amp;c.

OFFICER.	Maximum Annual Salary
Governor-General of India ..	Two hundred and fifty-six thousand rupees.
Governor of Bengal, Madras, Bombay, and the United Provinces.	One hundred and twenty-eight thousand rupees.
Commander-in-Chief of His Majesty's forces in India.	One hundred thousand rupees.
Governor of the Punjab and Bihar and Oussa.	One hundred thousand rupees.
Governor of the Central Provinces ...	Seventy-two thousand rupees.
Governor of Assam ... ..	Sixty-six thousand rupees.
Lieutenant-Governor ... ..	One hundred thousand rupees.
Member of the Governor-General's executive Council (other than the Commander-in-Chief).	Eighty thousand rupees.
Member of the executive council of the governor of Bengal, Madras, Bombay, and the United Provinces.	Sixty-four thousand rupees.

## SCHEDULES.

### OFFICIAL SALARIES, ETC —*concl'd*

OFFICER.	Maximum Annual Salary.
Member of the executive council of the governor of the Punjab and Bihar and Orissa ... ..	Sixty thousand rupees.
Member of the executive council of the Governor of the Central Provinces. ... ..	Forty-eight thousand rupees.
Member of the executive council of the governor of Assam	Forty-two thousand rupees.

### THIRD SCHEDULE.

#### OFFICES RESERVED TO THE INDIAN CIVIL SERVICE.

##### *A.—Offices under the Governor-General in Council.*

1. The offices of secretary, joint secretary, and deputy secretary in every department except the Army, Marine, Education, Foreign, Political, and Public Works Departments. Provided that if the office of secretary or deputy secretary in the Legislative Department, is filled from among the members of the Indian Civil Service, then the office of deputy secretary or secretary in that department as the case may be, need not be so filled.

2. Three offices of Accountants General.

##### *B.—Offices in the provinces which were known in the year 1861 as "Regulation Provinces."*

The following offices, namely —

1. Member of the Board of Revenue.
2. Financial Commissioner
3. Commissioner of Revenue.
4. Commissioner of Customs.
5. Opium Agent.
6. Secretary in every department except the Public Works or Marine Departments.
7. Secretary to the Board of Revenue.
8. District or Sessions Judge.
9. Additional District or Sessions Judge
10. District magistrate.
11. Collector of Revenue or Chief Revenue Officer of a district.

# THE INDIAN CONSTITUTION.

## FOURTH SCHEDULE.

### Section 130

### Acts Repealed.

Session and Chapter	Short Title.	Extent of Repeal
10 Geo 3, c 47 ...	The East India Company Act, 1770	The whole Act
13 Geo 3, c 63 ...	The East India Company Act, 1772	The whole Act, except secs forty-two, forty-three & forty-five
21 Geo 3, c 70 ..	The East India Company Act, 1780	The whole Act, except section eighteen.
26 Geo. 3, c 57 ...	The East India Company Act, 1786.	Section thirty-eight
33 Geo 3, c 52 ..	The East India Company Act, 1793.	The whole Act.
37 Geo 3, c 142 ...	The East India Act, 1797.	The whole Act, except section twelve.
39 & 40 Geo 3, c 79...	The Government of India Act, 1800	The whole Act
53 Geo 3, c 155 .	The East India Company Act, 1813	The whole Act.
58 Geo. 3, c. 84 ...	The Indian Presidency Towns Act, 1815	The whole Act
4 Geo. 4, c 71 .	The Indian Bishops and Courts Act, 1823	The whole Act
6 Geo. 4, c 85 .	The Indian Salaries and Pensions Act, 1825	The whole Act
7 Geo 4, c 56 ..	The East India Officers Act, 1826	The whole Act
3 & 4 Will 4, c 85 ..	The Government of India Act, 1833	The whole Act., except section one hundred and twelve.
5 & 6 Will. 4, c. 52 ...	The India (North-West Provinces) Act, 1835	The whole Act.
7 Will. 4 & 1 Vict c 47	The India Officers Salaries Act, 1837	The whole Act
5 & 6 Vict., c. 119 ..	The Indian Bishop's Act, 1842.	The whole Act.
16 & 17 Vict. c 95 ...	The Government of India Act, 1853.	The whole Act.
17 & 18 Vict. c 77 ..	The Government of India Act, 1854	The whole Act
21 & 22 Vict. c 106 ..	The Government of India Act, 1858	The whole Act, except section four.

# SCHEDULES.

## Acts Repealed—*contd.*

Session and Chapter	Short Title.	Extent of Repeal
22 & 23 Vict., c 41 .	The Government of India Act, 1859	The whole Act
23 & 24 Vict., c 100 .	The European Forces (India) Act, 1860	The whole Act
23 & 24 Vict., c 102 ..	The East India Stock Act, 1860	The whole Act, except section six
24 & 25 Vict. c. 54 ...	The Indian Civil Service Act, 1861	The whole Act
24 & 25 Vict., c 67 ...	The Indian Councils Act, 1861	The whole Act
24 & 25 Vict., c. 104 ..	The Indian High Courts Act, 1861	The whole Act
28 & 29 Vict., c 15 ...	The Indian High Courts Act, 1865.	The whole Act.
28 & 29 Vict., c 17	The Government of India Act, 1865.	The whole Act.
32 & 33 Vict., c 97 ...	The Government of India Act, 1869.	The whole Act
32 & 33 Vict., c 98 ...	The Indian Councils Act, 1869.	The whole Act
33 & 34 Vict., c 3 ...	The Government of India Act, 1870	The whole Act
33 & 34 Vict., c 59 .	The East India Contracts Act 1870	The whole Act
34 & 35 Vict., c 34 ..	The Indian Councils Act, 1871	The whole Act. .
34 & 35 Vict., c 62 ..	The Indian Bishops Act, 1871	The whole Act
37 & 38 Vict., c. 3 . .	The East India Loan Act, 1874	Section fifteen
37 & 38 Vict., c 77 ...	The Colonial Clergy Act, 1874	Section thirteen
37 & 38 Vict., c 91 ...	The Indian Councils Act, 1874	The whole Act
43 Vict., c. 3 ...	The Indian Salaries and Allowances Act, 1880.	The whole Act.
44 & 45 Vict., c. 63 ...	The India Office Auditor Act, 1881.	The whole Act
47 & 48 Vict., c 38 ...	The Indian Marine Service Act, 1884	Sections two, three, four and five.
55 & 56 Vict., c 14 ...	The Indian Councils Act, 1892	The whole Act
3 Edw. 7, c 11 ...	The Contracts (India Office) Act, 1903	The whole Act.

# THE INDIAN CONSTITUTION.

## Acts Repealed — *concl'd.*

Session and Chapter.	Short Title	Extent of Repeal.
4 Edw. 7, c. 26 ...	The Indian Councils Act, 1904.	The whole Act
7 Edw. 7, c. 35 ...	The Council of India Act, 1907	The whole Act
9 Edw. 7, c. 4 ...	The Indian Councils Act, 1909.	The whole Act
1 & 2 Geo. 5, c. 18 ...	The Indian High Courts Act, 1911.	The whole Act.
1 & 2 Geo. 5, c. 25 ...	The Government of India (Amendment) Act, 1911.	The whole Act
2 & 3 Geo. 5, c. 6 ...	The Government of India Act, 1912.	The whole Act.

## FIFTH SCHEDULE.

### *Section 131 (3).*

Provisions of this Act which may be repealed or altered by the Indian Legislature.

Section.	Subject.
62 ... ..	Power to extend limits of presidency towns.
106 ... ..	Jurisdiction, powers and authority of high courts.
108 (1) ... ..	Exercise of jurisdiction of high court by single judges or division courts.
109 ... ..	Power for Governor-General in Council to alter local limits of jurisdiction of high courts, etc.
110 ... ..	Exemption from jurisdiction of high courts.
111 ... ..	Written order by Governor-General in Council a justification for act in high court.
112 ... ..	Law to be administered in cases of inheritance, succession, contract and dealing between party and party.



# SCHEDULES.

## Provisions of this Act which may be repealed or altered by the Indian Legislature—*concl'd.*

Section.	Subject.
114 (2)           ...           ...	Powers of advocate-general.
124 (1)           ...           ...	Oppression.
124 (4)—so far as it relates to persons employed or con- cerned in the collection of revenue or the administra- tion of justice.	Trading
124 (5) so far as it relates to persons other than the governor-general, a gover- nor, or a member of the executive council of the governor-general or of a governor	Receiving presents.
125 ..           ...           ...	Loans to princes or chiefs.
126 ...           ...           ...	Carrying on dangerous correspondence.
128 ...           ...           ...	Limitation for prosecutions in British India.
129 ...           ...           ...	Penalties



## APPENDIX A.

### INDIAN LEGISLATIVE RULES

*(Government of India Notification No. 121 (Legislative Department)  
dated Simla, the 24th September, 1920. Vide Gazette of  
India Extraordinary, September 27, 1920.*

Whereas by section 47 of the Government of India Act, 1919, it is provided that the said Act shall come into operation on such date or dates as the Governor General in Council with the approval of the Secretary of State in Council may appoint ;

And whereas the said Act confers powers for the making of rules thereunder for regulating the course of business in the Council of State and the Legislative Assembly ; and for matters incidental and consequential thereto ,

And whereas it is necessary, for the purpose of bringing into operation the provisions of the said Act in respect of such Council and Assembly on such date as may hereafter be appointed, to make such rules prior to the date on which these provisions will be brought into operation ,

And whereas a draft of such rules was laid before both Houses of Parliament and was duly approved by them with certain modifications and additions ,

Now, therefore, in exercise of the powers conferred by section 37 of the Interpretation Act, 1889, read with the rule-making powers under the said Act, the Governor General in Council is pleased with the sanction of the Secretary of State in Council to make the said rules in the form so approved, the same being as follows :—

1. (1) *Short title and commencement.*—(1) These rules may be called the Indian Legislative Rules.

## THE INDIAN CONSTITUTION.

- (2) They shall come into force on a date to be appointed by the Governor General in Council with the approval of the Secretary of State in Council.

2. *Definitions.*—In these rules, unless the context otherwise requires.—

“Assembly” means the Legislative Assembly ,

“Chamber” means a Chamber of the Indian Legislature ,

“Council” means the Council of State ,

“Finance Member” means the member of the Assembly appointed by the Governor General to perform the functions assigned to the Finance Member under these rules ;

“Gazette” means the Gazette of India ,

“member” means a member of either Chamber ,

“member of the Government” means a member of the Governor General’s Executive Council, and includes any member to whom such member may delegate any function assigned to him under these rules ;

“resolution” means a motion for the purpose of discussing a matter of general public interest ,

“standing order” means a standing order of either Chamber.

“Secretary” means the Secretary to either Chamber, and includes any person for the time being performing the duties of the Secretary.

3. *Temporary Chairman of Legislative Assembly* —At the commencement of every Session, the President shall nominate from amongst the members of the Assembly a panel of not more than four Chairmen, any one of whom may preside over the Assembly in the absence of the President and Deputy President, when so requested by the President or, in his absence, by the Deputy President.

4. *Power of persons presiding.*—The Deputy President and any Chairman of the Assembly and any person appointed by the Governor General to preside over the Council in the absence of the President shall, when presiding over the Assembly or the Council, as the case may be. have the same powers as the President

## APPENDIX A.

when so presiding, and all references to the President in these rules shall, in these circumstances, be deemed to be references to any such person so presiding.

5. *Appointment of the Secretary*—The Secretary and such assistants of the Secretary as the Governor General considers to be necessary shall be appointed by order in writing by the Governor General and shall hold office during his pleasure

6. *Allotment of time for non-official business and precedence of business.*—The Governor General, after considering the state of business of the Chamber, shall, at the commencement of each Session of that Chamber, allot as many days as are in his opinion compatible with the public interests for the business of non-official members in that Chamber, and may, from time to time during the Session, alter such allotment, and on these days such business shall have precedence. At all other times Government business shall have precedence.

7. *Power to disallow questions.*—The President may within the period of notice disallow any question or any part of a question on the ground that it relates to a matter which is not primarily the concern of the Governor General in Council, and, if he does so, the question or part of the question shall not be placed on the list of questions.

8. *Subject-matter of questions.*—(1) A question may be asked for the purpose of obtaining information on a matter of public concern within the special cognisance of the member to whom it is addressed.

Provided that no question shall be asked in regard to any of the following subjects, namely :—

(i) any matter affecting the relations of His Majesty's Government, or of the Governor General in Council, with any foreign State,

(ii) any matter affecting the relations of any of the foregoing authorities with any Prince or Chief under the suzerainty of His Majesty, or relating to the affairs of

## THE INDIAN CONSTITUTION.

any such Prince or Chief, or to the administration of the territory of any such Prince or Chief, and

(iii) any matter which is under adjudication by a Court of Law having jurisdiction in any part of His Majesty's Dominions.

(2) If any doubt arises whether any question is or is not within the restrictions imposed by sub-rule (1) the Governor General shall decide the point and his decision shall be final.

9. *Questions regarding controversy between authorities.*—In matters which are or have been the subject of controversy between the Governor General in Council and the Secretary of State or a Local Government, no question shall be asked except as to matters of fact, and the answer shall be confined to a statement of facts.

10. *Supplementary questions.*—Any member may put a supplementary question for the purpose of further elucidating any matter of fact regarding which an answer has been given

Provided that the President shall disallow any supplementary question if, in his opinion, it infringes the rules as to the subject-matter of questions.

11. *Motions for adjournments*—A motion for an adjournment of the business of either Chamber for the purpose of discussing a definite matter of urgent public importance may be made with the consent of the President.

12. *Restrictions on power to make motion.*—The right to move the adjournment of either Chamber for the purpose of discussing a definite matter of urgent public importance shall be subject to the following restrictions, namely :—

(i) not more than one such motion shall be made at the same sitting ;

(ii) not more than one matter can be discussed on the same motion, and the motion must be restricted to a specific matter of recent occurrence ;

(iii) the motion must not revive discussion on a matter which has been discussed in the same Session ;

## APPENDIX A.

(iv) the motion must not anticipate a matter which has been previously appointed for consideration, or with reference to which a notice of motion has been previously given, and

(i) the motion must not deal with a matter on which a resolution could not be moved.

13. *Quorum*.—In the case of the Council the presence of at least fifteen members, and in the case of the Assembly the presence of at least twenty-five members, shall be necessary to constitute a meeting of the Council or of the Assembly for the exercise of its powers.

14. *Language of the Indian Legislature*.—The business of the Indian legislature shall be transacted in English, provided that the President may permit any member unacquainted with English to address the Council in a vernacular.

15. *Decision on points of order*—(1) The President shall decide all points of order which may arise and his decision shall be final.

(2) Any member may at any time submit a point of order for the decision of the President, but in doing so shall confine himself to stating the point.

16. *Irrelevance or repetition*.—The President, after having called the attention of the Chamber to the conduct of a member who persists in irrelevance or in tedious repetition either of his own arguments or of the arguments used by other members in debate, may direct him to discontinue his speech.

17. *Power to order withdrawal of member*.—(1) The President shall preserve order and have all powers necessary for the purpose of enforcing his decisions on all points of order

(2) He may direct any member whose conduct is in his opinion grossly disorderly to withdraw immediately from the Chamber, and any member so ordered to withdraw shall do so forthwith and shall absent himself during the remainder of the day's meeting. If any member is ordered to withdraw a second time in the same Session, the President may direct the member to

absent himself from the meetings of the Chamber for any period not longer than the remainder of the Session, and the member so directed shall absent himself accordingly.

(3) The President may, in the case of grave disorder arising in the Chamber, suspend any sitting for a time to be named by him.

18. *Publication of Bills.*—The Governor General may order the publication of any Bill (together with the Statement of Objects and Reasons accompanying it) in the Gazette, although no motion has been made for leave to introduce the Bill. In that case it shall not be necessary to move for leave to introduce the Bill, and, if the Bill is afterwards introduced it shall not be necessary to publish it again.

19. *Notice of motion for leave to introduce Bills.*—(1) Any member, other than a member of the Government, desiring to move for leave to introduce a Bill shall give notice of his intention, and shall, together with the notice, submit a copy of the Bill and a full Statement of Objects and Reasons.

(2) If the Bill is a Bill which under the Government of India Act requires sanction, the member shall annex to the notice a copy of such sanction, and the notice shall not be valid until this requirement is complied with.

(3) If any question arises whether a Bill is or is not a Bill which requires sanction under the Government of India Act, the question shall be referred to the Governor General, and his decision on the question shall be final.

(4) The period of notice of a motion for leave to introduce a Bill under this rule shall be one month or, if the Governor General so directs, a further period not exceeding in all two months.

20. *Publication.*—As soon as may be after a Bill has been introduced, the Bill, unless it has already been published, shall be published in the Gazette.

21. *Effect of certification by Governor General.*—If the Governor General certifies that a Bill or any clause of a Bill or any amendment to a Bill affects the safety or tranquility of British India or any part thereof, and directs that no proceedings or no further



proceedings shall be taken thereon, all notices of motions in connection with the subject-matter of the certificate shall lapse, and if any such motion has not already been set down on the list of business it shall not be so set down. If any such motion has been set down on the list of business, the President shall, when the motion is reached, inform the Chamber of the Governor General's action, and the Chamber shall forthwith without debate proceed to the next item of business.

22. *Power to disallow resolution.*—(1) The Governor General may within the period of notice disallow any resolution or any part of a resolution, on the ground that it cannot be moved without detriment to the public interest, or on the ground that it relates to a matter which is not primarily the concern of the Governor General in Council, and, if he does so, the resolution or part of the resolution shall not be placed on the list of business.

(2) The Governor General may disallow on grounds as aforesaid any motion for adjournment under rule 11, notwithstanding the consent of the President, and if he does so the adjournment shall not be permitted by the President and no further discussion of the motion shall take place

23. *Restrictions on subjects for discussion.*—(1) Every resolution shall be in the form of a specific recommendation addressed to the Governor General in Council, and no resolution shall be moved in regard to any of the following subjects, namely :—

- (i) Any matter affecting the relations of His Majesty's Government, or of the Governor General or the Governor General in Council, with any foreign State ;
- (ii) any matter affecting the relations of any of the foregoing authorities with any Prince or Chief under the suzerainty of His Majesty, or relating to the affairs of any such Prince or Chief or to the administration of the territory of any such Prince or Chief ; and
- (iii) any matter which is under adjudication by a Court of Law having jurisdiction in any part of His Majesty's dominions.

## THE INDIAN CONSTITUTION.

(2) This decision of the Governor General on the point whether any resolution is or is not within the restrictions imposed by sub-rule (1) shall be final.

24. *Copy to Government.*—A copy of every resolution which has been passed by either Chamber shall be forwarded to the Governor General in Council, but any such resolution shall have effect only as a recommendation to the Governor-General in Council.

25. *Bills which have passed originating Chamber.*—Every Bill which has been passed by the originating Chamber shall be sent to the other Chamber, and copies of the Bill shall be laid on the table at the next following meeting of that Chamber.

26. *Notice.*—At any time after copies have been laid on the table, any member acting on behalf of Government in the case of a Government Bill or, in any other case, any member may give notice of his intention to move that the Bill be taken into consideration.

27. *Motion for consideration.*—On the day on which the motion is set down in the list of business which shall, unless the President otherwise directs, be not less than three days from the receipt of the notice, the member giving notice may move that the Bill be taken into consideration.

28. *Discussion.*—On the day on which such motion is made or on any subsequent day to which the discussion is postponed, the principle of the Bill and its general provisions may be discussed, but the details of the Bill must not be discussed further than is necessary to explain its principle.

29. *Reference to Select Committee.*—Any member may (if the Bill has not already been referred to a Select Committee of the originating Chamber or to a Joint Committee of both Chambers, but not otherwise) move as an amendment that the Bill be referred to a Select Committee, and, if such motion is carried, the Bill shall be referred to a Select Committee, and the standing orders regarding Select Committees on Bills originating in the Chamber shall then apply.

30. *Consideration and passing.*—If the motion that the Bill be taken into consideration, is carried, the Bill shall be taken into consideration, and the provisions of the standing orders of the Chamber regarding consideration of amendments to Bills and the subsequent procedure in regard to the passing of Bills shall apply.

31. *Bills passed in either Chamber without amendment.*—If the Bill is passed without amendment and the originating Chamber is the Legislative Assembly, a message shall be sent to the Legislative Assembly intimating that the Council of State have agreed to the Bill without any amendments. If the originating Chamber is the Council of State, the Bill with a message to the effect that the Legislative Assembly have agreed to the Bill without any amendments shall be sent to the Council of State.

32. *Bills passed in either Chamber with amendment.*—If the Bill is passed with amendments, the Bill shall be returned with a message asking the concurrence of the originating Chamber to the amendments.

33. *Return of amended Bills to originating Chamber.*—When a Bill which has been amended in the other Chamber is returned to the originating Chamber, copies of the Bill shall be laid on the table at the next following meeting of that Chamber

34. *Appointment of time for consideration of amendments.* After an amended Bill has been laid on the table, any member acting on behalf of Government in the case of a Government Bill or, in any other case, any member after giving three days' notice, or with the consent of the President without notice, may move that the amendments be taken into consideration.

35. *Procedure on consideration of amendment.* (1) If a motion that the amendments be taken into consideration is carried, the President shall put the amendments to the Chamber in such manner as he thinks most convenient for their consideration.

(2) Further amendments relevant to the subject-matter of the amendments made by the other Chamber may be moved, but no further amendment shall be moved to the Bill, unless it is conse-

## THE INDIAN CONSTITUTION.

quential upon, or an alternative to, an amendment made by the other Chamber.

36. *Procedure consequent on consideration of amendments.* (1) If the Chamber agrees to the amendments made by the other Chamber, a message intimating its agreement shall be sent to that Chamber.

(2) If the Chamber disagrees with the amendments made by the other Chamber or any of them, the Bill with a message intimating its disagreement shall be sent to that Chamber.

(3) If the Chamber agrees to the amendments or any of them with further amendments or proposes further amendments in place of amendments made by the other Chamber, the Bill as further amended with a message to that effect shall be sent to the other Chamber.

(4) The other Chamber may either agree to the Bill as originally passed in the originating Chamber or as further amended by that Chamber, as the case may be, or may return the Bill with a message that it insists on an amendment or amendments to which the originating Chamber has disagreed

(5) If a Bill is returned with a message intimating that the other Chamber insists on amendments to which the originating Chamber is unable to agree, that Chamber may either—

(i) report the fact of the disagreement to the Governor General, or

(ii) allow the Bill to lapse.

37. *Convening of joint sitting.* A joint sitting of both Chambers shall be convened by the Governor-General by notification in the Gazette.

38. *President and procedure.* The President of Council shall preside at a joint sitting and the procedure of the Council shall, so far as practicable, apply.

39. *Effect of joint sitting.* The members present at a joint sitting may deliberate and all vote together upon the Bill as last proposed by the originating Chamber and upon amendments, if any, which have been made therein by one Chamber and

## APPENDIX A.

not agreed to by the other, and any such amendments which are affirmed by a majority of the total members of the Council and the Assembly present at such sitting shall be taken to have been carried; and if the Bill with the amendments, if any, is affirmed by a majority of the members of the Council and the Assembly present at such sitting, it shall be deemed to have been duly passed by both Chambers.

40 *Conferences.* (1) If both Chambers agree to a meeting of members for the purpose of discussing a difference of opinion which has arisen between the two Chambers a conference shall be held.

(2) At a conference each Chamber shall be represented by an equal number of members.

(3) The Conference shall determine its own procedure.

(4) The time and place of the Conference shall be fixed by the President of the Council.

41. *Message.*—Messages between one Chamber shall be conveyed by the Secretary of the one Chamber to the Secretary of the other, or in such other manner as the Chambers may agree.

42. *Joint Committees.*—(1) If a resolution is passed in the originating Chamber recommending that a Bill should be committed to a joint committee of both Chambers a message shall be sent to the other Chamber to inform it of the resolution and to desire its concurrence in the resolution

(2) If the other Chamber agrees, a motion shall be made in each Chamber nominating the members of that Chamber who are to serve on the Committee. On a joint committee equal numbers of each Chamber must be nominated.

(3) The Chairman of the committee shall be elected by the committee. He shall have only a single vote, and, if the votes are equal, the question shall be decided in the negative.

(4) The time and place of the meeting of the committee shall be fixed by the President of the Council.

43. *The Budget.*—A statement of the estimated annual expenditure and revenue of the Governor General in Council (here-

inafter referred to as "the Budget") shall be presented to each Chamber on such day or days as the Governor-General may appoint.

44. *Demands for grants*—(1) A separate demand shall ordinarily be made in respect of the grant proposed for each Department of the Government, provided that the Finance Member may in his discretion include in one demand grants proposed for two or more Departments, or make a demand in respect of expenditure which cannot readily be classified under particular Departments.

(2) Each demand shall contain, first, a statement of the total grant proposed, and then a statement of the detailed estimate under each grant divided into items.

(3) Subject to these rules the Budget shall be presented in such a form as the Finance Member may consider best fitted for its consideration by the Assembly.

45. *Stages of the Budget debate*.—The Budget shall be dealt with by the Assembly in two stages, namely —

(i) a general discussion ; and

(ii) the voting of demands for grants.

46. *General discussion*.—(1) On a day to be appointed by the Governor-General subsequent to the day on which the Budget is presented and for such time as the Governor-General may allot for this purpose, the Assembly shall be at liberty to discuss the Budget as a whole or any question of principle involved therein, but no motion shall be moved at this stage, nor shall the Budget be submitted to the vote of the Assembly.

(2) The Finance Member shall have a general right of reply at the end of the discussion.

(3) The President may, if he thinks fit, prescribe a time-limit for speeches.

47. *Voting of grants*—(1) Not more than fifteen days shall be allotted by the Governor General for the discussion of the demands of the Governor General in Council for grants.

(2) Of the days so allotted, not more than two days shall be allotted by the Governor General to the discussion of any one

## APPENDIX A.

demand. As soon as the maximum limit of time for discussion is reached, the President shall forthwith put every question necessary to dispose of the demand under discussion.

(3) On the last day of the allotted days at five o'clock, the President shall forthwith put every question necessary to dispose of all the outstanding matters in connection with the demands for grants

48. *Motion at this stage.*—(1) Now motion for appropriation can be made except on the recommendation of the Governor General communicated to the Assembly.

(2) Motions may be moved at this stage to omit or reduce any grant, but not to increase or alter the destination of a grant.

(3) When several motions relating to the same demand are offered, they shall be discussed in the order in which the heads to which they relate appear in the Budget.

49. *Excess grants.*—When money has been spent on any service for which the vote of Assembly is necessary during any financial year in excess of the amount granted for that service and for that year, a demand for the excess shall be presented to the Assembly by the Finance Member and shall be dealt with in the same way by the Assembly as if it were a demand for a grant.

50. *Supplementary or additional grants*—(1) An estimate shall be presented to the Assembly for a supplementary or additional grant when—

- (i) the amount voted in the Budget of a grant is found to be insufficient for the purposes of the current year, or
- (ii) a need arises during the current year for expenditure for which the vote of the Assembly is necessary upon some new service not contemplated in the Budget for that year.

(2) Supplementary or additional estimates shall be dealt with in the same way by the Assembly as if they were demands for grants.

51. *Constitution of Committee on Public Accounts.*—(1) As soon as may be after the commencement of each financial year, a Com-

mittee on Public Accounts shall be constituted for the purpose of dealing with the audit and appropriation accounts of the Governor-General in Council and such other matters as the Finance Department may refer to the Committee.

(2) The Committee on Public Accounts shall consist of not more than twelve members including the Chairman, of whom not less than two-thirds shall be elected by the non-official members of the Assembly according to the principle of proportionate representation by means of the single transferable vote. The remaining members shall be nominated by the Governor-General.

(3) The Finance Member shall be Chairman of the Committee, and, in the case of an equality of votes on any matter, shall have a second or casting vote.

52. *Control of Committee on Public Accounts.*—(1) In scrutinising the audit and appropriation accounts of the Governor-General in Council, it shall be the duty of the Committee to satisfy itself that the money voted by the Assembly has been spent within the scope of the demand granted by the Assembly.

(2) It shall be the duty of the Committee to bring to the notice of the Assembly.—

- (i) every re-appropriation from one grant to another grant ;
- (ii) every re-appropriation within a grant which is not made in accordance with such rules as may be prescribed by the Finance Department ; and
- (iii) all expenditure which the Finance Department has requested should be brought to the notice of the Assembly.



## APPENDIX B.

### RULES FOR GOVERNORS' LEGISLATIVE COUNCILS.

Whereas by section 47 of the Government of India Act, 1919, it is provided that the said Act shall come into operation on such date or dates as the Governor-General in Council with the approval of the Secretary of State in Council may appoint ;

And whereas the said Act confers powers for the making of rules thereunder for regulating the course of business in the Legislative Council of the Governor of—\* and for matters incidental and consequential thereto ;

And whereas it is necessary for the purpose of bringing into operation the provisions of the said Act in respect of such Council on such date as may hereafter be appointed to make such rules prior to the date on which these provisions will be brought into operation ;

And whereas a draft of such rules was laid before both Houses of Parliament and was duly approved by them with certain modifications and additions ;

Now, therefore, in exercise of the powers conferred by section 37 of the Interpretation Act, 1889, read with the rule-making powers under the said Act, the Governor General in Council is pleased with the sanction of the Secretary of State in Council to make the said rules in the form se approved, the same being as follows :—

1. *Short title and commencement.*—(1) These rules may be called the—\* Legislative Council Rules.

(2) They shall come into force on a date to be appointed by the Governor-General in Council with the approval of the Secretary of State in Council.

2. *Definitions.*—In these rules—

“Council” means the Legislative Council of the Governor of—\*

\* Here read Bengal, Bombay, Madras, United Provinces, the Punjab, Bihar and Orissa, Assam or the Central Provinces, as the case may be.

“Finance Member” means the member of the Council appointed by the Governor to perform the functions of the Finance Member under these rules ,

“Gazette” means the—\* ,

“Member” means a member of the Council ;

“Member of the Government” means a member of the Executive Council or a minister, and includes any member to whom such member may delegate any function assigned to him under these rules ;

“Resolution” means a motion for the purpose of discussing a matter of general public interest ,

“Standing order” means a standing order of the Council , and

“Secretary” means a Secretary to the Council, and includes any person for the time being performing the duties of the Secretary.

3. *Temporary Chairman.*—At the commencement of every Session, the President shall nominate from amongst the members of the Council a panel of not more than four Chairmen, any one of whom may preside over the Council in the absence of the President and Deputy President, when so requested by the President or, in his absence, by the Deputy President.

4. *Power of persons presiding.*—The Deputy President and any Chairman of the Council shall, when presiding over the Council, have the same powers as the President when so presiding, and all references to the President in the rules and standing orders shall, in these circumstances, be deemed to be references to any such person so presiding.

5. *Appointment of the Secretary.*—The Secretary and such assistants of the Secretary as the Governor considers to be necessary shall be appointed by order in writing by the Governor and shall hold office during his pleasure.

\* Here read Calcutta Gazette, Bombay Government Gazette (or the Sind Official Gazette or both), Fort St. George Gazette, U P. Government Gazette, Punjab Government Gazette, Bihar and Orissa Gazette, Assam Gazette, or Central Provinces Gazette, as the case may be.

6. *Allotment of time for non-official business and precedence of business.*—The Governor, after considering the state of business of the Council, shall, at the commencement of each Session, allot as many days as are in his opinion compatible with the public interests for the business of non-official members in the Council, and may from time to time during the Session alter such allotment, and on these days such business shall have precedence. At all other times Government business shall have precedence.

7. *Power to disallow questions.*—The President may within the period of notice disallow any question or any part of a question on the ground that it relates to a matter which is not primarily the concern of the local Government, and, if he does so, the question or part of the question shall not be placed on the list of questions.

8. *Subject-matter of questions*—(1) A question may be asked for the purpose of obtaining information on a matter of public concern within special cognisance of the member to whom it is addressed :

Provided that no question shall be asked in regard to any of the following subjects, namely :—

- (i) any matter affecting the relations of His Majesty's Government, or of the Government of India, or of the Governor or the Governor in Council, with any foreign State ;
- (ii) any matter affecting the relations of any of the foregoing authorities with any Prince or Chief under the suzerainty of his Majesty, or relating to the affairs of any such Prince or Chief or to the administration of the territory of any such Prince or Chief ; and
- (iii) any matter which is under adjudication by a Court of Law having jurisdiction in any part of His Majesty's Dominions.

(2) If any doubt arises whether any question is or is not within the restrictions imposed by sub-rule (1), the Governor shall decide the point and his decision shall be final.

9. *Questions regarding controversy with higher authorities.*—In

matters which are or have been the subject of controversy between the Governor-General in Council or the Secretary of State and the local Government, no question shall be asked except as to matters of fact, and the answer shall be confined to a statement of facts.

10. *Supplementary questions.*—Any member may put a supplementary question for the purpose of further elucidating any matter of fact regarding which an answer has been given :

Provided that the President shall disallow any supplementary question if, in his opinion, it infringes the rules as to the subject-matter of questions.

11. *Motions for adjournments.*—A motion for an adjournment of the business of the Council for the purpose of discussing a definite matter of urgent public importance may be made with the consent of the President.

12. *Restrictions on power to make motion.*—The right to move the adjournment of the Council for the purpose of discussing a definite matter of urgent public importance shall be subject to the following restrictions, namely :—

- (i) not more than one such motion shall be made at the same sitting,
- (ii) not more than one matter can be discussed on the same motion, and the motion must be restricted to a specific matter of recent occurrence,
- (iii) the motion must not revive discussion on a matter which has been discussed in the same Session ;
- (iv) the motion must not anticipate a matter which has been previously appointed for consideration, or with reference to which a notice of motion has been previously given ; and
- (v) the motion must not deal with a matter on which a resolution could not be moved.

13. *Quorum.*—The presence of at least—\* members shall be

\* Here read 15 in the case of the Punjab, 30 in the case of Madras, 20 in the case of the Central Provinces, 12 in the case of Assam, 25 in the case of the other four Governors' Provinces.

necessary to constitute a meeting of the Council for the exercise of its powers.

14. *Language of the Council.*—The business of the Council shall be transacted in English, but any member who is not fluent in English may address the Council in any recognised vernacular of the Province, provided that the President may call on any member to speak in any language in which he is known to be proficient.

15. *Decision on points of order.*—(1) The President shall decide all points of order which may arise, and his decision shall be final.

(2) Any member may at any time submit a point of order for the decision of the President, but in doing so shall confine himself to stating the point.

16. *Irrelevance or repetition.*—The President, after having called the attention of the Council to the conduct of a member who persists in irrelevance or in tedious repetition either of his own arguments or of the arguments used by other members in debate, may direct him to discontinue his speech.

17. *Power to order withdrawal of member.*—(1) The President shall preserve order and have all powers necessary for the purpose of enforcing his decisions on all points of order.

(2) He may direct any member whose conduct is in his opinion grossly disorderly to withdraw immediately from the Council, and any member so ordered to withdraw shall do so forthwith and shall absent himself during the remainder of the day's meeting. If any member is ordered to withdraw a second time in the same Session, the President may direct the member to absent himself from the meetings of the Council for any period not longer than the remainder of the Session, and the member so directed shall absent himself accordingly.

(3) The President may in the case of grave disorder arising in the Council suspend any sitting for a time to be named by him.

18. *Publication of Bills*—The Governor may order the publication of any Bill (together with the Statement of Objects and Reasons accompanying it) in the Gazette, although no motion has

been made for leave to introduce the Bill. In that case it shall not be necessary to move for leave to introduce the Bill, and, if the Bill is afterwards introduced, it shall not be necessary to publish it again.

19. *Notice of motion or leave to introduce Bills.*—(1) Any member, other than a member of the Government, desiring to move for leave to introduce a Bill shall give notice of his intention, and shall, together with the notice, submit copy of the Bill and a full Statement of Objects and Reasons.

(2) If the Bill is a Bill which under the Government of India Act requires sanction, the member shall annex to the notice a copy of such sanction, and the notice shall not be valid until this requirement is complied with

(3) If any question arises whether a Bill is or is not a Bill which requires sanction under the Government of India Act, the question shall be referred to the authority which would have power to grant the sanction if it were necessary, and the decision of the authority on the question shall be final.

(4) The period of notice of a motion for leave to introduce a Bill under this rule shall be as follows, namely:—

- (a) if the Bill relates to a transferred subject—fifteen days ;
- (b) if the Bill relates to a reserved subject—one month or, if the Governor so directs, a further period not exceeding in all two months.

20. *Publication.*—As soon as may be after a Bill has been introduced, the Bill, unless it has already been published, shall be published in the Gazette.

21. *Effect of certification by Governor.*—If the Governor certifies that a Bill or any clause of a Bill or any amendment to a Bill affects the safety or tranquillity of a Province or any part thereof, and directs that no proceedings or no further proceedings shall be taken thereon, all notices of motions in connection with the subject-matter of the certificate shall lapse, and if any such motion has not already been set down on the list of business it shall not be so set down. If any such motion has been set down on the list of busi-

ness, the President shall, when the motion is reached, inform the Council of the Governor's action, and the Council shall forthwith without debate proceed to the next item of business.

22. *Power to disallow resolutions.*—(1) The Governor may within the period of notice disallow any resolution or any part of a resolution, on the ground that it cannot be moved without detriment to the public interest, or on the ground that it relates to a matter which is not primarily the concern of the local Government, and if he does so the resolution or part of the resolution shall not be placed on the list of business.

(2) The Governor may disallow on grounds as aforesaid any motion for adjournment under rule 11, notwithstanding the consent of the President, and if he does so the adjournment shall not be permitted by the President and no further discussion of the motion shall take place.

23. *Restrictions on subjects for discussion.*—(1) Every resolution shall be in the form of a specific recommendation addressed to the Government, and no resolution shall be moved in regard to any of the following subjects, namely —

- (i) any matter affecting the relations of His Majesty's Government, or of the Government of India, or of the Governor or the Governor in Council, with any foreign State,
- (ii) any matter affecting the relations of any of the foregoing authorities with any Prince or Chief under the suzerainty of His Majesty, or relating to the affairs of any such Prince or Chief or to the administration of the territory of any such Prince or Chief; and
- (iii) any matter which is under adjudication by a Court of Law having jurisdiction in any part of His Majesty's Dominions.

(2) The decision of the Governor on the point whether any resolution is or is not within the restrictions imposed by sub-rule (1) shall be final.

24. *Copy to Government.*—A copy of every resolution which

## THE INDIAN CONSTITUTION.

has been passed by the Council shall be forwarded to the Government, but any such resolution shall have effect only as a recommendation to the Government.

25. *The Budget*.—A statement of the estimated annual expenditure and revenue of the Province (hereinafter referred to as “the Budget”) shall be presented to the Council on such day as the Governor may appoint.

26. *Demands for grants*.—(1) A separate demand shall ordinarily be made in respect of the grant proposed for each Department of the Government, provided that the Finance Member may in his discretion include in one demand grants proposed for two or more Departments, or make a demand in respect of expenditure, such as Famine Relief and Insurance and Interest, which cannot readily be classified under particular Departments. Demands affecting reserved and transferred subjects shall, so far as may be possible, be kept distinct.

(2) Each demand shall contain, first, a statement of the total grant proposed, and then a statement of the detailed estimate under each grant divided into items.

(3) Subject to these rules, the Budget shall be presented in such a form as the Finance Member may consider best fitted for its consideration by the Council.

27. *Stages of the Budget debate*.—The Budget shall be dealt with by the Council in two stages, namely :—

(i) a general discussion, and

(ii) the voting of demands for grants.

28. *General discussions*.—(1) On a day to be appointed by the Governor subsequent to the day on which the Budget is presented and for such time as the Governor may allot for this purpose, the Council shall be at liberty to discuss the Budget as a whole or any question of principle involved therein, but no motion shall be moved at this stage, nor shall the Budget be submitted to the vote of the Council.

(2) The Finance Member shall have a general right of reply at the end of the discussion.



(3) The President may, if he thinks fit, prescribe a time-limit for speeches.

29. *Voting of grants.*—(1) Not more than twelve days shall be allotted by the Governor for the discussion of the demands of the local Government for grants.

(2) Of the days so allotted, not more than two days shall be allotted by the Governor to the discussion of any one demand. As soon as the maximum limit of time for discussion is reached, the President shall forthwith put every question necessary to dispose of the demand under discussion.

(3) On the last day of the allotted days at 5 o'clock, the President shall forthwith put every question necessary to dispose of all the outstanding matters in connection with the demands for grants.

30. *Motions at this stage.*—(1) No motion for appropriation can be made except on the recommendation of the Governor communicated to the Council.

(2) Motions may be moved at this stage to omit or reduce any grant or any item in a grant, but not to increase or alter the destination of a grant.

(3) When several motions relating to the same demand are offered, they shall be discussed in the order in which the heads to which they relate appear in the Budget.

(4) No motions shall be made for the reduction of a grant as a whole until all motions for the omission or reduction of definite items within that grant have been discussed.

31. *Excess grants.*—When money has been spent on any service for which the vote of Council is necessary during any financial year in excess of the amount granted for that service and for that year, a demand for the excess shall be presented to the Council by the Finance Member and shall be dealt with in the same way by the Council as if it were a demand for a grant.

## THE INDIAN CONSTITUTION.

32. *Supplementary or additional grants.*—(1) An estimate shall be presented to the Council for a supplementary or additional grant when—

- (i) the amount voted in the Budget of a grant is found to be insufficient for the purposes of the current year, or
- (ii) a need arises during the current year for expenditure for which the vote of the Council is necessary upon some new service not contemplated in the Budget for that year.

(2) Supplementary or additional estimates shall be dealt with in the same way by the Council as if they were demands for grants.

33. *Constitution of Committee on Public Accounts.*—(1) As soon as may be after the commencement of each financial year, a Committee on Public Accounts shall be constituted for the purpose of dealing with the audit and appropriation accounts of the Province and such other matters as the Finance Department may refer to the Committee

(2) The Committee on Public Accounts shall consist of such number of members as the Governor may direct, of whom not less than two-thirds shall be elected by the non-official members of the Council according to the principle of proportionate representation by means of the single transferable vote. The remaining members shall be nominated by the Governor

(3) The Finance Member shall be Chairman of the Committee, and, in the case of an equality of votes on any matter, shall have a second or casting-vote.

34. *Control of Committee on Public Accounts.*—(1) In scrutinising the audit and appropriation accounts of the Province, it shall be the duty of the Committee to satisfy itself that the money voted by the Council has been spent within the scope of the demand granted by the Council

(2) It shall be the duty of the Committee to bring to the notice of the Council—

- (i) every re-appropriation from one grant to another grant ;

APPENDIX B.

- (ii) every re-appropriation within a grant which is not made in accordance with the rules regulating the functions of the Finance Department, or which has the effect of increasing the expenditure on an item the provision for which has been specifically reduced by a vote of the Council, and
  - (iii) all expenditure which the Finance Department has requested should be brought to the notice of the Council.
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**APPENDIX C.**  
**THE INDIAN ELECTIONS OFFENCES AND INQUIRIES**  
**ACT 1920**

The following Act of the Indian Legislative Council received the assent of the Governor-General on the 14th September, 1920, and is hereby promulgated for general information.—

ACT NO XXXIX OF 1920.

*An Act to provide for the punishment of malpractices in connection with elections, and to make further provision for the conduct of inquiries in regard to disputed elections to legislative bodies constituted under the Government of India Act.*

WHEREAS it is expedient to provide for the punishment of malpractices in connection with elections, and to make further provision for the conduct of inquiries in regard to disputed elections to legislative bodies constituted under the Government of India Act, It is hereby enacted as follows—

PRELIMINARY.

- Short title and extent.      1. (1) This Act may be called the Indian Elections Offences and Inquiries Act, 1920 ; and
- (2) It extends to the whole of British India.

**PART I.**

AMENDMENT OF THE INDIAN PENAL CODE AND CODE OF CRIMINAL  
PROCEDURE.

2. (1) In section 21 of the Indian Penal Code, after the tenth entry, the following shall be inserted, namely “Eleventh :—Every person who holds any office in virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election”; and after *Explanation 2*, the following shall be added, namely :—

“*Explanation 3.*—The word ‘election’ denotes an election for the purpose of selecting members of any legislative, municipal or

other public authority, of whatever character, the method of selection to which is by, or under, any law prescribed as by election."

(2) After Chapter IX of the same Code the following Chapter shall be inserted, namely —

### "CHAPTER IX-A

#### OF OFFENCES RELATING TO ELECTIONS.

171-A. For the purposes of this Chapter—

(a) "candidate" means a person who has been nominated as "Candidate," "electoral a candidate at any election and includes a right" defined. person who, when an election is in contemplation, holds himself out as a prospective candidates thereat provided that he is subsequently nominated as a candidate at such election :

(b) "electoral right" means the right of a person to stand, or not to stand as, or to withdraw from being, a candidate or to vote or refrain from voting at an election.

171-B. (1) Whoever—

(i) gives a gratification to any person with the object of inducing him or any other person to exercise  
Bribery any electoral right or of rewarding any person for having exercised any such right ; or

(ii) accepts either for himself or for any other person any gratification as a reward for exercising any such right or for inducing or attempting to induce any other person to exercise any such right.

commits the offence of bribery .

Provided that a declaration of public policy or a promise of public action shall not be an offence under this section.

(2) A person who offers, or agrees to give, or offers or attempts to procure, a gratification shall be deemed to give a gratification.

(3) A person who obtains or agrees to accept or attempts to obtain a gratification shall be deemed to accept a gratification, and a person who accepts a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he

has not done, shall be deemed to have accepted the gratification as a reward.

171-C. (1) Whoever voluntarily interferes or attempts to interfere with the free exercise of any electoral rights commits the offence of undue influence at an election.

Undue influence at elections.

(2) Without prejudice to the generality of the provisions of sub-section (1) whoever—

(a) threatens any candidate or voter, or any person in whom a candidate or voter is interested, with injury of any kind, or

(b) induces or attempts to induce a candidate or voter to believe that he or any person in whom he is interested will become or will be rendered an object of Divine displeasure or of spiritual censure,

shall be deemed to interfere with the free exercise of the electoral right of such candidate or voter, within the meaning of sub-section (1).

(3) A declaration of public policy or a promise of public action or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this section

171-D. Whoever at an election applies for a voting paper or votes in the name of any other person, whether living or dead, or in a fictitious name, or who having voted once at such election applies at the same election for a voting paper in his own name, and whoever abets, procures or attempts to procure the voting by any person in any such way, commits the offence of personation at an election.

171-E. Whoever commits the offence of bribery shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Punishment for bribery.

Provided that the bribery by treating shall be punished with fine only.

## APPENDIX C.

*Explanation*.—“Treating” means that form of bribery where the gratification consists in food, drink, entertainment, or provision.

171-F. Whoever commits the offence of undue influence or personation at an election shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both

171-G. Whoever with intent to affect the result of an election makes or publishes any statement purporting to be a statement of fact which is false and which he either knows or believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate shall be punished with fine.

171-H. Whoever without the general or special authority in writing of a candidate incurs or authorises expenses on account of the holding of any public meeting, or upon any advertisement, circular or publication, or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate, shall be punished with fine which may extend to five hundred rupees :

Provided that if any person having incurred any such expenses not exceeding the amount of ten rupees without authority obtains within ten days from the date on which such expenses were incurred the approval in writing of the candidate, he shall be deemed to have incurred such expenses with the authority of the candidate.

171-I. Whoever being required by any law for the time being in force or any rule having the force of law to keep accounts of expenses incurred at, or in connection with, an election fails to keep such accounts shall be punished with fine which may extend to five hundred rupees.”

3. (1) In section 196 of the Code of Criminal Procedure, 1898, after the words “Chapter VI” the words, “or IX A.” shall be inserted.

Amendment of the Code of Criminal Procedure,—(Act V of 1898.)

(2) In Schedule II to the same Code after the entries relating to Chapter IX of the Indian Penal Code the XLV of 1860 following shall be added, namely.—

“CHAPTER IX A.—OFFENCES RELATING TO ELECTIONS.”

	Bribery	...	Shall not arrest without warrant.	Summons	Bailable.	Not compoundable.	Imprisonment of either description for one year, or fine, or both or if treating only, fine only	Presidency Magistrate or Magistrate of the first class.
171-E.								
171-F.	Undue influence and personation at an election.	...	do	do.	do.	do.	Imprisonment of either description for one year, or fine, or both.	do.
171-G.	False statement in connection with an election.		do.	do.	do.	do.	Fine ...	do.
171-H.	Illegal payments in connection with elections.		do	do	do.	do.	Fine of 500 rupees.	do.
171-I.	Failure to keep election accounts.		do.	do.	do.	do.	Fine of 500 rupees	do.



## APPENDIX C.

### PART II.

#### ELECTION INQUIRIES AND OTHER MATTERS.

##### Definitions.

4. In this Part, unless there is anything repugnant in the subject or context,—

(a) “costs” means all costs, charges and expenses of, or incidental to, an inquiry ;

(b) “election” means an election to either chamber of the Indian legislature or to a Legislative Council constituted under the Government of India Act ;

(c) “inquiry” means an inquiry in respect of an election by Commissioners appointed for that purpose by the Governor-General, Governor or Lieutenant-Governor :

(d) “pleader” means any person entitled to appear and plead for another in a Civil Court, and includes an advocate, a vakil, and an attorney of a High Court.

5. Commissioners appointed to hold an inquiry shall have the

**Powers of Commissioners.**—V of 1908, powers which are vested in a Court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters :—

(a) discovery and inspection,

(b) enforcing the attendance of witnesses, and requiring the deposit of their expenses,

(c) compelling the production of documents,

(d) examining witnesses on oath,

(e) granting adjournments,

(f) reception of evidence taken on affidavit, and

(g) issuing commissions for the examination of witnesses,

and may summon and examine *suo motu* any person whose evidence appears to them to be material ; and shall be deemed to be a Civil

V of 1898, Court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898.

*Explanation :—*For the purposes of enforcing the attendance of witnesses, the local limits of the Commissioners’ jurisdiction shall be the limits of the Province in which the election was held.

## THE INDIAN CONSTITUTION.

6. The provisions of the Indian Evidence Act, 1872, shall, subject to the provisions of this Act, be deemed to apply in all respects to an inquiry.

Application of Act I of 1872 to inquiries.

7. Notwithstanding anything in any enactment to the contrary, no document shall be inadmissible in evidence on the ground that it is not duly stamped or registered.

Documentary evidence,

8. (1) No witness shall be excused from answering any question as to any matter relevant to a matter in issue in an inquiry upon the ground that the answer to such question will criminate or may tend, directly or indirectly, to criminate him, or that it will expose, or tend, directly or indirectly, to expose him to a penalty or forfeiture of any kind :

Obligation of witness to answer and certificate of indemnity,

Provided that—

(i) no person who has voted at an election shall be required to state for whom he has voted ; and

(ii) a witness who, in the opinion of the Commissioners, has answered truly all questions which he has been required by them to answer shall be entitled to receive a certificate of indemnity, and such certificate may be pleaded by such person in any Court and shall be deemed to be a full and complete defence to or upon any charge under Chapter IXA of the Indian Penal Code arising out of the matter to which such certificate relates, nor shall any such answer be admissible in evidence against him in any suit or other proceeding.

(2) Nothing in sub-section (1) shall be deemed to relieve a person receiving a certificate of indemnity from any disqualification in connection with an election imposed by any law or any rule having the force of law.

9. Any appearance, application or act before the Commissioners may be made or done by the party in person or by a pleader duly appointed to act on his behalf :

Appearance by pleader.

## APPENDIX C.

Provided that any such appearance shall, if the Commissioners so direct, be made by the party in person.

10. The reasonable expenses incurred by any person in attending to give evidence may be allowed by the Commissioners to such person, and shall, unless the Commissioners otherwise direct, be deemed to be part of the costs.

11. (1) Costs shall be in the discretion of the Commissioners, and the Commissioners shall have full power Costs and pleaders' fees, etc. to determine by and to whom and to what extent such costs are to be paid and to include in their report all necessary recommendations for the purposes aforesaid. The Commissioners may allow interest on costs at a rate not exceeding six per cent. per annum, and such interest shall be added to the costs.

(2) The fees payable by a party in respect of fees of his adversary's pleader shall be such fees as the Commissioners may allow.

12. Any order made by the Governor-General or Governor or Lieutenant-Governor on the report of the Execution of orders as to costs. Commissioners regarding the costs of the inquiry may be produced before the principal Civil Court of original jurisdiction within the local limits of whose jurisdiction any person directed by such order to pay any sum of money has a place of residence or business, or, where such place is within the local limits of the ordinary original civil jurisdiction of a chartered High Court, before the Court of Small Causes having jurisdiction there, and such Court shall execute such order or cause it to be executed in the same manner and by the same procedure as if it were a decree for the payment of money made by itself in a suit.

13. Any person who has been convicted of an offence under section 171-E or 171-F of the Indian Penal Code or has been disqualified from exercising any electoral right, for a period of not less than five years, on account of malpractices in Disqualification of persons found guilty of election offences,—  
XLV 1860.

## THE INDIAN CONSTITUTION.

connection with an election shall be disqualified for five years from the date of such conviction or disqualification from—

- (a) being appointed to, or acting in, any judicial office ;
- (b) being elected to any office of any local authority when the appointment to such office is by election, or holding or exercising any such office to which no salary is attached ;
- (c) being elected or sitting or voting as a member of any local authority , or
- (d) being appointed or acting as a trustee of a public trust:

Provided that the Governor-General, in the case of an election to the Council of State or the Legislative Assembly, and the Governor or the Lieutenant-Governor, in the case of an election to his Legislative Council, may exempt any such person from such disqualification.

14. (1) Every officer, clerk, agent or other person who performs any duties in connection with the recording or counting of votes at an election shall maintain and aid in maintaining the secrecy of the voting and shall not (except for some purpose authorised by or under any law) communicate to any person any information calculated to violate such secrecy.

(2) Any person who wilfully acts in contravention of the provisions of this section shall be punished with imprisonment of either description for a term not exceeding three months or with fine, or with both.

## APPENDIX D.

### ORDER IN COUNCIL FOR THE APPOINTMENT OF A HIGH COMMISSIONER FOR INDIA.

*The Gazette of India, October, 2, 1920.*

**No. 6634.**—The following Order in Council is published for general information —

AT THE COURT AT BUCKINGHAM PALACE.

The 13th day of August, 1920.

PRESENT :

#### THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL

WHEREAS by Section thirty-five of the Government of India Act, 1919, it is enacted that His Majesty by Order in Council may make provision for the appointment of a High Commissioner for India in the United Kingdom and for the pay, pension, powers, duties, and conditions of employment of the High Commissioner and of his Assistants and provide for delegating to the High Commissioner any of the powers previously exercised by the Secretary of State or the Secretary of State in Council in relation to making contracts and prescribe the conditions under which he shall act on behalf of the Governor-General in Council or any Local Government ;

AND WHEREAS it has seemed to His Majesty by and with the advice of His Privy Council to be expedient to make provision forthwith for the appointment of a High Commissioner for India in the United Kingdom and to make such provision as hereinafter appears for the other matters mentioned or referred to in the above recited enactment ;

Now, THEREFORE, His Majesty, by virtue and in exercise of the power in this behalf by the above recited enactment in Him vested

## THE INDIAN CONSTITUTION.

is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered as follows :—

1. The Governor-General in Council may from time to time by notification in the *Gazette of India* with the approval of the Secretary of State in Council appoint some person to be High Commissioner for India in the United Kingdom, and may with the like sanction and in like manner remove or suspend any such person and appoint another in his stead

2. The person appointed to be High Commissioner for India in the United Kingdom (hereinafter referred to as the High Commissioner) shall hold office for a period not exceeding five years from the date of his appointment, and shall be eligible for the reappointment. The Governor-General in Council may at any time grant leave of absence to the High Commissioner, and appoint some person to discharge his duties in his absence.

3. The salary of the High Commissioner shall be three thousand pounds a year payable out of the revenues of India. No pension shall be payable in respect of services rendered as High Commissioner.

Provided that if a person in the Civil Service of the Crown in India is appointed High Commissioner, he may reckon his period of service as High Commissioner for the purpose of earning any pension for which he may be eligible as a member of the Civil Service of the Crown in India.

4. In the exercise of his powers and performance of his duties the High Commissioner shall be subject to the direction and control of the Governor-General in Council.

5. Subject to the provisions of the Government of India Act the High Commissioner shall—

(a) act as agent of the Governor-General in Council in the United Kingdom,

(b) act on behalf of local Governments in India for such purposes and in such cases as the Governor-General in Council shall prescribe ;

## APPENDIX D.

(c) conduct any business relating to the Government of India hitherto conducted in the office of the Secretary of State by or under the direction of the Secretary of State in Council or the Council of India which may be assigned to him by the Secretary of State in Council, provided that no assignment of business under this Order shall be such as to restrict the powers of superintendence, direction and control vested in the Secretary of State or the Secretary of State in Council under the Government of India Act or otherwise.

6. So far as may be necessary for exercising the powers or performing the duties of his office, the High Commissioner shall have power to make and sign, and where necessary seal, contracts in the name and on behalf of the Secretary of State in Council, and to vary and discharge contracts made on behalf of the Secretary of State in Council, whether before or after the date of this Order.

The benefit and liability of every contract made in pursuance of this provision shall pass to the Secretary of State in Council for the time being.

7. The High Commissioner may from time to time appoint such officers, clerks, and servants as are required to assist him in the performance of his duties. Such appointments shall be made in accordance with general or special orders to be issued in this behalf by the Governor-General in Council, and the orders shall prescribe the terms as to pay, pension and leave of absence and conditions of service generally, on which such appointments may be made.

8. If any person on the establishment of the Secretary of State in Council is appointed to be an officer, clerk or servant on the establishment of the High Commissioner, such person shall have a right of appeal to the Secretary of State in Council against any order of the High Commissioner removing or suspending him from employment, or affecting his pay, promotion or conditions of employment, and shall for the purposes of superannuation or retiring allowance or additional allowance or gratuity, and his

## THE INDIAN CONSTITUTION.

legal personal representatives shall for the purpose of gratuity be in the same position as if he had remained on the establishment of the Secretary of State in Council.

9. The High Commissioner shall lay before the Auditor of the accounts of the Secretary of State in Council, accounts of the receipt, expenditure and disposal in the United Kingdom of all money, stores and property by the High Commissioner, accompanied by proper vouchers for their support, and submit to the inspection of the Auditor all books, papers and writings having relation thereto, and supply any information which may be required by the Auditor in connection therewith, and shall, as soon as may be, transmit to the Governor-General in Council a copy of any report made by the Auditor on such accounts.

10. The High Commissioner shall not without the sanction of the Governor-General in Council during his tenure of office be or act as Director or Agent of or hold any office in any company or other association or firm whether incorporated or unincorporated or hold any other employment or engage in any business whether within or without the United Kingdom.

*Almeric Fitzroy*

**No. 6636.**—In the exercise of the powers conferred by clause 1 of the Order of the King's Most Excellent Majesty in Council dated the 13th August 1920, the Governor-General in Council, with the approval of the Right Honourable the Secretary of State for India in Council, is pleased to appoint Sir William Stevenson Meyer, G. C. I. E., K. C. S. I., as High Commissioner for India in the United Kingdom with effect from the 1st October, 1920.



# **The Indian Constitution.**

## **PART II.**

### **Documents relating to the Indian Constitutional Reforms of 1919.**

1. **The Royal Proclamation announcing His Majesty the King-Emperor's assent to the Government of India Bill, December 23, 1919.**

George the Fifth, by the grace of God of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India. To my Viceroy and Governor-General, to the Princes of Indian States and to all my subjects in India of whatsoever race or creed, greeting :

1. Another epoch has been reached to-day in the Councils of India. I have given my Royal assent to an Act which will take its place among the great historic measures passed by the Parliament of this Realm for the better government of India and the greater contentment of her people. The Acts of seventeen hundred and seventy-three and seventeen hundred and eighty-four were designed to establish a regular system of administration and justice under the Honourable East India Company. The Act of eighteen hundred and thirty-three opened the door for Indians to public office and

employment. The Act of eighteen hundred and fifty-eight transferred the administration from the Company to the Crown and laid the foundations of public life which exist in India to-day. The Act of eighteen hundred and sixty-one sowed the seed of representative institutions and the seed was quickened into life by the Act of nineteen hundred and nine. The Act which has now become law entrusts elected representatives of the people with a definite share in Government and points the way to full representative Government hereafter. If, as I confidently hope, the policy which this Act inaugurates should achieve its purpose, the results will be momentous in the story of human progress; and it is timely and fitting that I should invite you to-day to consider the past and to join me in my hopes of the future.

2. Ever since the welfare of India was confided to us, it has been held as a sacred trust by our Royal House and Line. In eighteen hundred and fifty-eight Queen Victoria of revered memory solemnly declared herself bound to her Indian subjects by the same obligations of duty as to all her other subjects; and she assured them religious freedom and the equal and impartial protection of law. In his message to the Indian people in nineteen hundred and three my dear father King Edward the Seventh announced his determination to maintain unimpaired the same principles of humane and equitable administration. Again, in his proclamation of nineteen hundred and eight, he renewed the assurances which had been given fifty years before and surveyed the progress which they had inspired. On my accession to

the throne in nineteen hundred and ten I sent a message to the Princes and peoples of India acknowledging their loyalty and homage and promising that the prosperity and happiness of India should always be to me of the highest interest and concern. In the following year I visited India with the Queen-Empress and testified my sympathy for her people and my desire for their well-being.

3. While these are sentiments of affection and devotion by which I and my predecessors have been animated, the Parliament and the people of this Realm and my officers in India have been equally zealous for the moral and material advancement of India. We have endeavoured to give to her people the many blessings which Providence has bestowed upon ourselves. But there is one gift which yet remains and without which the progress of a country cannot be consummated: the right of her people to direct her affairs and safeguard her interests. The defence of India against foreign aggression is a duty of common Imperial interest and pride. The control of her domestic concerns is a burden which India may legitimately aspire to taking upon her own shoulders. The burden is too heavy to be borne in full until time and experience have brought the necessary strength; but opportunity will now be given for experience to grow and for responsibility to increase with the capacity for its fulfilment.

4. I have watched with understanding and sympathy the growing desire of my Indian people for representative institutions. Starting from small beginnings this ambition has steadily strengthened its hold upon the intelligence of

the country. It has pursued its course along constitutional channels with sincerity and courage. It has survived the discredit which at times and in places lawless men sought to cast upon it by acts of violence committed under the guise of patriotism. It has been stirred to more vigorous life by the ideals for which the British Commonwealth fought in the Great War and it claims support in the part which India has taken in our common struggles, anxieties and victories. In truth the desire after political responsibility has its source at the roots of the British connection with India. It has sprung inevitably from the deeper and wider studies of human thought and history, which that connection has opened to the Indian people. Without it the work of the British in India would have been incomplete. It was therefore with a wise judgment that the beginnings of representative institutions were laid many years ago. This scope has been extended stage by stage until there now lies before us a definite step on the road to responsible Government.

5. With the same sympathy and with redoubled interest I shall watch the progress along this road. The path will not be easy and in marching towards the goal there will be need of perseverance and of mutual forbearance between all sections and races of my people in India. I am confident that those high qualities will be forthcoming. I rely on the new popular assemblies to interpret wisely the wishes of those whom they represent and not to forget the interests of the masses who cannot yet be admitted to the franchise. I rely on the leaders of the people, the Ministers of the future, to

face responsibility and endure to sacrifice much for the common interest of the State, remembering that true patriotism transcends party and communal boundaries ; and while retaining the confidence of the legislatures, to co-operate with my officers for the common good in sinking unessential differences and in maintaining the essential standards of a just and generous Government. Equally do I rely on my officers to respect their new colleagues and to work with them in harmony and kindliness ; to assist the people and their representatives in an orderly advance towards free institutions ; and to find in these new tasks a fresh opportunity to fulfil as in the past their highest purpose of faithful service to my people.

6. It is my earnest desire at this time that so far as possible any trace of bitterness between my people and those who are responsible for my Government should be obliterated. Let those who in their eagerness for political progress have broken the law in the past respect it in future. Let it become possible for those who are charged with the maintenance of peaceful and orderly Government to forget extravagances they have had to curb. A new era is opening. Let it begin with a common determination among my people and my officers to work together for a common purpose. I therefore direct my Viceroy to exercise in my name and on my behalf my Royal clemency to political offenders in the fullest measure which in his judgment is compatible with public safety. I desire him to extend it on this condition to persons who for offences against the State or under any special or emergency legislation are suffering from

imprisonment or restrictions upon their liberty. I trust that this leniency will be justified by the future conduct of those whom it benefits and that all my subjects will so demean themselves as to render it unnecessary to enforce the laws for such offences hereafter.

7. Simultaneously with the new constitution in British India I have gladly assented to the establishment of a Chamber of Princes. I trust that its counsels may be fruitful of lasting good to the Princes and States themselves, may advance the interests which are common to their territories and British India, and may be to the advantage of the Empire as a whole. I take the occasion again to assure the Princes of India of my determination ever to maintain unimpaired their privileges, rights and dignities.

8. It is my intention to send my dear son, the Prince of Wales, to India by next winter to inaugurate on my behalf the new Chamber of Princes and the new constitution in British India. May he find mutual goodwill and confidence prevailing among those on whom will rest the future service of the country, so that success may crown their labours and progress and enlightenment attend their administration. And with all my people I pray to Almighty God that by His wisdom and under His guidance India may be led to greater prosperity and contentment and may grow to the fulness of political freedom.

December the twenty-third, nineteen hundred and nineteen.

## II. Declaration of August 20, 1917.

On August 20, 1917, the Secretary of State for India made the following announcement in the House of Commons :—

“The policy of His Majesty’s Government, with which the Government of India are in complete accord, is that of the increasing association of Indians in every branch of the administration and the gradual development of self-governing institutions with a view to the progressive realisation of responsible government in India as an integral part of the British Empire. They have decided that substantial steps in this direction should be taken as soon as possible, and that it is of the highest importance as a preliminary to considering what these steps should be that there should be a free and informal exchange of opinion between those in authority at home and in India. His Majesty’s Government have accordingly decided, with His Majesty’s approval, that I should accept the Viceroy’s invitation to proceed to India to discuss these matters with the Viceroy and the Government of India, to consider with the Viceroy the views of local Governments, and to receive with him the suggestions of representative bodies and others.

“I would add that progress in this policy can only be achieved by successive stages. The British Government and the Government of India, on whom the responsibility lies for the welfare and advancement of the Indian peoples, must be judges of the time and measure of each advance, and they must be guided by the co-operation received from those upon whom new opportunities of service will thus be conferred and by the extent to which it is found that confidence can be reposed in their sense of responsibility.

“Ample opportunity will be afforded for public discussion of the proposals which will be submitted in due course to Parliament.”

### III. Summary of the Proposals for Indian Constitutional Reforms contained in the Montagu-Chelmsford Report of April 22, 1918.

[This summary is intended only to be a concise indication of the proposals; and it should be read with the paragraphs of the report which are noted within brackets. *For the detailed Proposals see "Indian Constitutional Documents", Vol. I, pp. 477—566 and 596—607.*]

#### PARLIAMENT AND THE INDIA OFFICE.

1. The control of Parliament and the Secretary of State to be modified. (291, 292.)
2. The salary of the Secretary of State for India to be transferred to the Home Estimates. (294.)
3. The House of Commons to be asked to appoint a select committee for Indian affairs. (295.)
4. A Committee to be appointed to examine and report on the present constitution of the Council of India and on the India Office establishment. (293.)

#### THE GOVERNMENT OF INDIA.

5. The Government of India to preserve indisputable authority on matters adjudged by it to be essential in the discharge of its responsibilities for peace, order and good government. (266.)
6. A Privy Council for India to be established. (287.)

#### *The Executive.*

7. To increase the Indian element in the Governor General's Executive Council. (272.)
8. To abolish the present statutory maximum for the Executive Council and the statutory qualification for seats. (271.)



9. To take power to appoint a limited number of members of the legislature to a position analogous to that of Parliamentary Under-Secretaries in Great Britain. (275.)

*The Legislature.*

10. To replace the present Legislative Council of the Governor-General by a Council of State and a Legislative Assembly. (273-278.)

11. The Council of State to consist of 50 members (exclusive of the Governor-General who will be President, with power to nominate a Vice-President). Of the members 21 to be elected and 29 nominated by the Governor-General. Of the nominated members 4 to be non-officials and not more than 25 (including the Members of the Executive Council) to be officials. (277.)

The life of each Council of State to be 5 years. (278.)

The Governor-General in Council to frame regulations as to the qualifications for membership of the Council of State. (278.)

12. The Legislative Assembly to consist of about 100 members, of whom two-thirds to be elected and one-third nominated. Of the nominated members not less than one-third to be non-officials. (273.)

The President of the Assembly to be nominated by the Governor-General. (275.)

13. Official members of the Council of State to be eligible also for nomination to the Legislative Assembly. (277.)

14. The Governor-General to have power to dissolve either the Council of State or the Legislative Assembly. (283.)

15. The following procedure to be adopted for legislation. (279-282.)

A. Government bills : ordinarily to be introduced and carried through the usual stages in the Assembly, and if passed by the Assembly to be sent to the Council of State. If the Council of State amend the bill in a

manner which is unacceptable to the Assembly, the bill to be submitted to a joint session of both houses, unless the Governor-General in Council is prepared to certify that the amendments introduced by the Council are essential to the interests of peace and order or good government (including in this term sound financial administration), in which case the Assembly not to have power to reject or modify such amendments. But in the event of leave to introduce being refused or the bill being thrown out at any stage, the Governor-General in Council to have the power, on certifying that the bill is within the formula cited above, to refer it *de novo*, to the Council of State. The Governor-General in Council also to have the power in cases of emergency so certified to introduce the bill in the first instance in and to pass it through the Council of State, merely reporting it to the Assembly. (279.)

*B.* Private bills: to be introduced in the chamber of which the mover is a member and on being passed by that chamber to be submitted to the other. Differences of opinion between the chambers to be settled by means of joint sessions. If, however, a bill emerge from the Assembly in a form which the Government think prejudicial to good administration, the Governor-General in Council to have power to certify it in the terms already cited and to submit or re-submit it to the Council of State: the bill only to become law in the form given it by the Council. (280.)

16. Resolutions to have effect only as recommendations. (284.)

17. The Governor-General and the Crown to retain their respective powers of assent, reservation, or disallowance. (283.)

18. The Governor-General to retain his existing power of making Ordinances and the Governor-General in Council his power of making Regulations. (276 & 283.)

19. Nominated official members of the Council of State or the Legislative Assembly to have freedom of speech and vote except when Government otherwise directs. (275.)

## INDIAN CONSTITUTIONAL REFORM PROPOSALS.

20. Any member of the Council of State or the Legislative Assembly to be entitled to ask supplementary questions. The Governor-General not to disallow a question on the ground that it cannot be answered consistently with the public interest, but power to be retained to disallow a question on the ground that the putting of it is inconsistent with the public interest.

(236 & 286.)

21. Rules governing the procedure for the transaction of business in the Council of State and the Legislative Assembly to be made in the first instance by the Governor-General in Council. The Legislative Assembly and the Council of State to be entitled to modify their rules, subject to the sanction of the Governor-General. In each case such modifications not to require the sanction of the Secretary of State in Council and not to be laid before Parliament. (286.)

22. Joint Standing Committees of the Council of State and the Legislative Assembly to be associated with as many departments of Government as possible. The Governor-General in Council to decide with which departments Standing Committees can be associated, and the head of the department concerned to decide what matters shall be referred to the Standing Committee. Two-thirds of each Standing Committee to be elected by ballot by the non-official members of the Legislative Assembly and the Council of State, one-third to be nominated by the Governor-General in Council. (285.)

## THE PROVINCES.

23. The Provincial Governments to be given the widest independence from superior control in legislative, administrative, and financial matters which is compatible with the due discharge of their own responsibilities by the Government of India. (189)

24. Responsible government in the provinces to be attained first by the devolution of responsibility in certain subjects called hereafter the transferred sub-

## THE INDIAN CONSTITUTION.

jects (all other subjects being called reserved subjects), and then by gradually increasing this devolution by successive stages until complete responsibility is reached. (215, 218, 219, 238, 260.)

### *Provincial Executives.*

25. The Executive Government in a province to consist of a Governor and Executive Council, a Minister or Ministers<sup>v</sup> nominated by the Governor from the elected members of the Legislative Council, and an additional Member or Members without portfolios. (214, 218, 220)

26. The Executive Council to consist of two members, one of whom will be an Indian. (218.)

Reserved subjects to be in the charge of the Governor and the Members of the Executive Council. (218.)

27. The Minister or Ministers to be appointed for the term of the Legislative Council, and to have charge of the transferred subjects. (218, 219.)

28. The additional Member or Members to be appointed by the Governor from among his senior officials for purposes of consultation and advice only. (220.)

29. The Government thus constituted to deliberate generally as a whole, but the Governor to have power to summon either part of his Government to deliberate with him separately. Decisions on reserved subjects and on the supply for them in the provincial budget to rest with the Governor and his Executive Council: decisions on transferred subjects and the supply for them with the Governor and the Ministers. (219, 221.)

30. Power to be taken to appoint a limited number of members of the Legislative Council to a position analogous to that of Parliamentary Under-Secretaries in Great Britain. (224.)

### *Provincial Legislatures.*

31. In each province an enlarged Legislative Council with a substantial elected majority to be established. The Council to consist of (1) members elected on as

broad a franchise as possible, (2) nominated including (a) official and (b) non-official members, (3) ex-officio members. The franchise and the composition of the Legislative Council to be determined by regulations to be made on the advice of the Committee described in paragraph 53 by the Governor-General in Council, with the sanction of the Secretary of State, and laid before Parliament. (225, 232, 233.)

32. The Governor to be President of the Legislative Council with power to appoint a Vice-President. (236.)

33. The Governor to have power to dissolve the Legislative Council. (254.)

34. Resolutions (except on the budget) to have effect only as recommendations. (237.)

35. Nominated official members to have freedom of speech and vote except when Government otherwise directs. (233.)

36. Any members of the Legislative Council to be entitled to ask supplementary questions. (236.)

37. The existing rules governing the procedure for the transaction of business to continue, but the Legislative Council to have power to modify them with the sanction of the Governor. (236.)

38. Standing Committees of the Legislative Council to be formed and attached to each department, or to groups of departments. These Committees to consist of members elected by the Legislative Council, of the heads of the departments concerned, and the Member or Minister, who would preside. (235.)

39. Legislation on all subjects normally to be passed in the Legislative Council. Exceptional procedure is provided in the succeeding paragraphs. (252.)

40. The Governor to have power to certify that a bill dealing with reserved subjects is essential either for the discharge of his responsibility for the peace or tranquillity of the province or of any part thereof, or for the discharge of his responsibility for reserved subjects. The bill will then, with this certificate, be published in the Gazette. It will be introduced and read in the

Legislative Council, and, after discussion on its general principles, will be referred to a grand committee: but the Legislative Council may require the Governor to refer to the Government of India, whose decision shall be final, the question whether he has rightly decided that the bill which he has certified was concerned with a reserved subject.

The Governor not to certify a bill if he is of opinion that the question of the enactment of the legislation may safely be left to the Legislative Council. (252.)

41. The Grand Committee (the composition of which may vary according to the subject-matter of the bill) to comprise from 40 to 50 per cent. of the Legislative Council. The members to be chosen partly by election by ballot, partly by nomination. The Governor to have power to nominate a bare majority (in addition to himself), but not more than two-thirds of the nominated members to be officials. (252.)

42. The bill as passed in grand committee to be reported to the Legislative Council, which may again discuss it generally within such time limits as may be laid down, but may not amend it except on the motion of a Member of the Executive Council or reject it. After such discussion the bill to pass automatically, but during such discussion the Legislative Council may record by resolution any objection felt to the principle or details and any such resolution to be transmitted with the Act to the Governor-General and the Secretary of State. (253.)

43. Any Member of the Executive Council to have the rights to challenge the whole or any part of a bill on its introduction, or any amendment when moved, on the ground that it trenches on the reserved field of legislation. The Governor to have the choice then either of allowing the bill to proceed in Legislative Council, or of certifying the bill, clause, or amendment. If he certifies the bill, clause, or amendment the Governor may either decline to allow it to be discussed, or suggest to the Legislative Council an amended bill or clause,

## INDIAN CONSTITUTIONAL REFORM PROPOSALS.

or at the request of the Legislative Council refer the bill to a Grand Committee. (254)

44. All provincial legislation to require the assent of the Governor and the Governor-General and to be subject to disallowance by His Majesty. (254)

45. The veto of the Governor to include power of return for amendment. (254.)

46. The Governor-General to have power to reserve provincial Acts. (254.)

### *Finance.*

47. A complete separation to be made between Indian and provincial heads of revenue. (200, 201.)

48. Provincial contributions to the Government of India to be the first charge on provincial revenues. (206 & 256.)

49. Provincial Governments to have certain powers of taxation and of borrowing. (210, 211.)

50. The budget to be laid before the Legislative Council. If the Legislative Council refuses to accept the budget proposals for reserved subjects the Governor in Council to have power to restore the whole or any part of the original allotment, on the Governor's certifying that, for reasons to be stated, such restoration is in his opinion essential either to the peace or tranquillity of the province or any part thereof, or to the discharge of his responsibility for reserved subjects. Except in so far as he exercises this power, the budget to be altered so as to give effect to resolutions of the Legislative Council. (256.)

### *Local Self-Government.*

51. Complete popular control in local bodies to be established as far as possible. (188.)

### *Modification of Provincial Constitutions.*

52. Five years after the first meeting of the new Councils the Government of India to consider any

## THE INDIAN CONSTITUTION.

applications addressed to it by a provincial Government or a provincial Legislative Council for the modification of the list of reserved and transferred subjects. In such cases the Government of India with the sanction of the Secretary of State to have power to transfer any reserved subject, or in case of serious maladministration to remove to the reserved list any subjects already transferred and to have power also to order that the salary of the Ministers shall be specifically voted each year by the Legislative Council. The Legislative Council to have the right of deciding at the same or any subsequent time by resolution that such salary be specifically voted yearly. (260.)

### PRELIMINARY ACTION.

53. A Committee to be appointed consisting of a Chairman appointed from England, an official, and an Indian non-official. This Committee to advise on the question of the separation of Indian from provincial functions, and to recommend which of the functions assigned to the province should be transferred subjects. An official and an Indian non-official in each province which it is at the time examining to be added to the Committee. (238.)

54. A second Committee to be appointed, consisting of a Chairman appointed from England, two officials, and two Indian non-officials, to examine constituencies, franchises, and the composition of the Legislative Council in each Province, and of the Legislative Assembly. An official and an Indian non-official in each Province which it is at the time examining to be added to the Committee. (225.)

55. The two Committees to have power to meet and confer. (238.)

### COMMISSION OF ENQUIRY.

56. A Commission to be appointed ten years after the first meeting of the new legislative bodies to review the constitutional position both as regards the Govern-



ment of India and the provinces. The names of the commissioners to be submitted for the approval of Parliament. Similar commissions to be appointed at intervals of not more than twelve years. (261.)

### THE NATIVE STATES.

57. To establish a Council of Princes. (306.)

58. The Council of Princes to appoint a standing committee. (307.)

59. The Viceroy in his discretion to appoint a Commission, composed of a High Court Judge and one nominee of each of the parties, to advise in case of disputes between States, or between a State and a Local Government or the Government of India. (308.)

60. Should the necessity arise of considering the question of depriving a Ruler of a State of any of his rights, dignities, or powers, or of debarring from succession any member of his family, the Viceroy to appoint a Commission to advise consisting of a High Court Judge, two Ruling Princes, and two persons of high standing nominated by him. (309.)

61. All States possessing full internal powers to have direct relations with the Government of India. (310.)

62. Relations with Native States to be excluded from transfer to the control of provincial Legislative Councils. (310.)

63. Arrangements to be made for joint deliberation and discussion between the Council of Princes and the Council of State on matters of common interest. (278, 311.)

### THE PUBLIC SERVICES.

64. Any racial bars that still exist in regulations for appointment to the public services to be abolished. (315.)

65. In addition to recruitment in England, where such exists, a system of appointment to all the public services to be established in India. (316.)

## THE INDIAN CONSTITUTION.

66. Percentages of recruitment in India, with definite rate of increase, to be fixed for all these services. (316—317.)

67. In the Indian Civil Service the percentage to be 33 per cent. of the superior posts, increasing annually by  $1\frac{1}{2}$  per cent, until the position is reviewed by the Commission (paragraph 56). (317.)

68. Rates of pay to be reconsidered with reference to the rise in the cost of living and the need for maintaining the standard of recruitment. Incremental time-scales to be introduced generally and increments to continue until the superior grade is attained. The maximum of ordinary pension to be raised to Rs. 6,000 payable at the rate of 1s. 9d. to the rupee, with special pensions for certain high appointments. Indian Civil Service annuities to be made non-contributory, but contributions to continue to be funded. Leave rules to be reconsidered with a view to greater elasticity, reduction of excessive amounts of leave admissible, and concession of reduced leave on full pay. The accumulation of privilege leave up to four months to be considered.

(318—321.)

69. A rate of pay based on recruitment in India to be fixed for all public services, but a suitable allowance to be granted to persons recruited in Europe or on account of qualifications obtained in Europe, and the converse principle to be applied to Indians employed in Europe. (322.)

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#### IV. H. E. Lord Chelmsford's address to Heads of Provinces, January 13, 1919,

Let me first welcome you to another Conference. I believe that those of us who were present at our deliberations last year recognised the value of such meetings, and for myself I can only say that it was and is a great pleasure to have all the heads of local Governments collected together under my roof as my guests. I had hoped this year that we should have been able to discuss the multifarious subjects which are of common interests to us all. But I fear that we shall have little time to deal with more than the one subject, *vis.*, the subject of Reforms, and to-day I do not propose to deal with any other subject. I will not repeat to you the formula of policy enunciated by His Majesty's Government on August 20th, 1917. You are all familiar with it. But it may be useful to cite the three outstanding features of that declaration. First, the progressive realisation of responsible government is given to us as the keynote and objective of our policy; secondly, substantial steps are to be taken at once in this direction; and thirdly, this policy is to be carried out by stages.

I think I shall not be stating the basic principle of this policy unfairly when I sum it up as the gradual transfer of responsibility to Indians. We are not here to discuss the merits or demerits of this policy. It is the policy enunciated by His Majesty's Government. It has been unchallenged in Parliament for the better part of two years, and while I am conscious that there are those who would have preferred some other form of advance, I am sure that even they would agree that it is idle to discuss any variant of it at this stage, but that what we have to do is to attempt to translate the announcement of August 20th into practice.

This was the task to which the Secretary of State and I set our hands last year, and you have the results of our joint attempt in the proposals of the Report. I am not going to travel over the whole field of those proposals, but I intend to confine my remarks to one big problem, really the one big point at issue on which everything else hangs—*vis.*, the

method by which this gradual transfer of responsibility is to be achieved.

Believe me, I have no intention of making any debating point this morning. The subject is too important, the issues at stake are too great for dialectics. I shall endeavour to put before you as succinctly as possible the issue as I see it, and nothing more.

The gradual transfer of responsibility—this is what we have to secure. Now what is responsibility? I cannot but think that there has been a good deal of talk and writing which are beside the mark on this subject and perhaps our Report is equally guilty with others in this respect. What are we aiming at in our policy? Surely this, that the decision of certain matters—I will not discuss what—shall rest with Indians; that in these matters it will be for them to say “Yes” or “No”; and that our scheme shall provide as far as possible for everybody knowing that the yes or no is their yes or no, and not that of the Executive Council. With this end in view, the Secretary of State and I examined the various proposals which were put before us, and after a prolonged and careful investigation we came to the conclusion that we could only attain it by the methods proposed in the Report. We entered upon our enquiry with no bias in favour of dyarchy. Indeed we made every endeavour to avoid it. We were fully conscious of its difficulties. We realise the possibilities of friction inherent in any dyarchic scheme, but we felt that the alternatives proposed had similar difficulties, were equally liable to engender friction and did not provide for (which was our desideratum) the gradual transfer of responsibility.

The Government of Bombay take the line of argument in their reply to the Government of India that the onus of proof is with the supporters of the scheme and not with those who condemn. I only mention this line of argument because I cannot help regarding it as unprofitable, and I hope it will not be pursued in our discussions this week. What we wish to secure is the best method of ensuring the gradual transfer of responsibility. The duty of discovering that method was placed by His Majesty's Government on the Secretary of State and myself. For the reasons set out with great elaboration in our Report we decided upon the scheme out-

## II. E. LORD CHILMSFORD'S ADDRESS.

lined therein, and we have published it for criticism. It is not very profitable to tell us that the onus of proof lies upon us. Of course it does and we have endeavoured in the course of 177 folio pages to prove our case. What we want is a scheme which will transfer some responsibility at once, which will provide machinery by which more responsibility can be transferred at later stages, and under which ultimately full responsibility can be attained in the provincial sphere. This is the problem which we have to solve, and I can assure you that no one will be better pleased than myself—and I believe the Secretary of State—if you can provide us with such a scheme.

Under our scheme it will be possible, I believe, to say, so far as the transferred subjects are concerned, that the Minister, and through him the Legislative Council, has said yes or no on a particular question.

Under our scheme it is possible to gradually enlarge the sphere in which the Minister and the Legislative Council will say yes or no.

And under our scheme responsibility in the whole sphere of Government can ultimately be attained.

I am passing by for the moment the criticisms, the very cogent criticisms, which have been made upon the working of our proposals and various details of our scheme. This is not because I ignore or underrate the force of those criticisms, but because I wish to concentrate your attention on the central point, *viz.*, the method by which the gradual transfer of responsibility can be achieved.

In inviting you therefore now to examine the various proposals advanced by certain local Governments as alternatives to our scheme, I would ask you to apply the following tests:—

*Firstly*, will it be possible under it to fix responsibility on Indians with regard to any particular question of policy?

*Secondly*, does it provide machinery by which a greater area of responsibility can later be transferred?

*Lastly*, does it lead up gradually to a stage under which full responsibility can be attained by Indians in the provincial sphere?

## THE INDIAN CONSTITUTION.

I lay stress, as you will see, on the progressive realisation of responsible government, the words of the announcement. I should be sorry to see any attempt to content ourselves with a scheme which might dispose of the difficulties of the moment, but did not provide for future expansion and development.

I shall not attempt to deal with the various alternative schemes which have been put forward in the replies of your Governments. But I would make this general remark with regard to them. They seem to me to fall short of our desideratum on one or more of the following points :—

1. In some there is a duality in fact, camouflaged by an outward unity and not compensated for by the saving grace of transfer of responsibility.

2. In others there is the gift of power without responsibility, a state of things akin to that proposed in the Congress-Moslem-League scheme, and I would beg you to examine very carefully the searching analysis and criticism of that scheme made in Chapter VII of our Report.

And now I have put before you with perhaps tedious reiteration the problem to which I invite you first to give your attention.

Believe me, I do not regard our Report as in any way verbally inspired. I am only anxious that we should arrive at the right solution. If we can arrive at an agreement as to the method of carrying out the fundamental principle, *vis.*, the transfer of responsibility, we shall at all events have cleared the ground, and we can then examine the machinery which will be necessary.

If your deliberations lead you to agree in preferring some different scheme from that put forward in the Report, then I think it is fair to ask you to develop your alternative in some detail ; so that I and my colleagues in the Government of India may have the same chance of judging it as the critics of the Report have had of judging the proposals of the Secretary of State and myself.

**V. Minute by the Lieutenant-Governors of the United Provinces, Punjab, and Burma and the Chief Commissioners of the Central Provinces and Assam. January 15, 1919.**

We, as Heads of Local Governments, have been asked by His Excellency the Viceroy to formulate a scheme alternative to that of the joint report and to develop it in some detail in order that he and his colleagues in the Government of India may have the same chance of judging it as the critics have had of judging the report.

2. We desire to make it clear beyond any misunderstanding that we are in entire accord with the statement made by His Majesty's Government on the 20th of August 1917. We desire to give effect to it by a progressive scheme of a truly liberal character based on a policy of trust and co-operation. We desire to avoid future friction by framing a scheme on broad and simple lines which will require only a few checks and those based, as far as possible, on existing practice and accepted principle. We fully realise the undesirability at this stage of departing from published proposals of very high authority, even though those proposals were admittedly published to elicit opinions and although it was mentioned in the statement of the 20th August 1917 that ample opportunity would be afforded for public discussion of the proposals which would be submitted in due course to Parliament. But we are deeply impressed by the weight of adverse criticism of what is known as the scheme of dualism in the report. There is a strong preponderance of local Governments against the scheme. The position has been summarised as follows :—

“Bengal and Bihar and Orissa treat the main question as closed to discussion, but the former is dubious and the latter guarded in its opinion. Madras is in favour of instituting sub-provinces but otherwise would fall in with the majority opinion. All other local Governments have declared against a dualised executive and wish to maintain the unity of the administration.”

## THE INDIAN CONSTITUTION

There is great division of opinion amongst Indians in regard to it. We are also impressed by the misgivings that exist in the services generally, Indian as well as European, as to their position and prospects under a dual form of government. The scheme exposes a large surface to legislative, administrative and financial friction. It breaks away from all experience and divides the Government against itself. It has all the elements which make for division at a time when there is most need for co-operation and association.

3. The statement of 20th August proclaimed as the policy of His Majesty's Government "The increasing association of Indians in every branch of the administration and the gradual development of self-governing institutions with a view to the progressive realisation of responsible government in India as an integral part of the British Empire." The statement went on to say that substantial steps in this direction should be taken as soon as possible, that progress in this policy could only be achieved by successive stages and that the British Government and the Government of India on whom the responsibility lay for the welfare and advancement of the Indian peoples must be the judges of the time and measure of such advance and they must be guided by the co-operation received from those upon whom new opportunities of service would thus be conferred and by the extent to which it was found that confidence could be reposed in their sense of responsibility. The proposals of the report appear to us to have gone much further than the terms of the announcement required but they have raised expectations which may render it necessary to make a greater immediate advance in the direction of the goal than the facts which face us, justify. While the announcement of His Majesty's Government in Parliament rightly placed the association of Indians with the Government in the foreground of the policy, the idea of association has been overshadowed and obscured by the idea of responsibility, or, as it has been aptly put, "the report begins by dividing in order to get responsibility, and ends by uniting in order to get association." We are also firmly of opinion that, especially during a period of transition from one form of government to another, it is clearly advisable, as far as possible, to build up on existing foundations and to have a scheme which, while giving effect to the announcement, will



fit in with an administrative system which has its roots in centuries of Indian rule. We believe that it is only by close association between officials and non-officials that we can bridge over the gulf that separates the present system of administration from popular government. We respectfully deprecate the sacrifice of practical experience to constitutional theory. In particular, we fear any clear-cut definition of responsibility in the sense in which it is defined in the report. In the report (paragraph 215) responsibility is defined as consisting primarily in amenability to constituents and in the second place, in amenability to an assembly. We need scarcely argue that in the absence of an electorate capable of enforcing a mandate, these conditions do not yet exist. In the words of the Bengal Government (paragraph 33 of their letter of 15th October 1918) "responsibility can scarcely be derived from an irresponsible source." Under existing conditions, the government is responsible to the Secretary of State, but in practice the government is largely and increasingly influenced by public opinion in the legislative council and outside it. We believe that in the period of transition it would be unsafe to hamper the development and natural growth of a more popular system of government by premature constitutional definitions.

4. We now proceed to outline the alternative scheme which we propose. We are at a great disadvantage in not knowing what are the recommendations of the important committees who are now discussing the questions of franchise, the division of authority between the imperial and provincial governments and the transfer of subjects under the scheme of the report ; also in not knowing what will be the terms of the instrument of instructions to Governors (paragraph 219 of the report). It is obvious that the decision as to the electorate must be the foundation of any scheme of popular government. It is clear that owing to religious, caste, social and other divisions amongst the people the electorate will be very different from those of western countries. It is also evident that for some considerable period, we shall be ignorant as to how the electorate will act. The scheme in the report in this respect is at present a leap in the dark. We content ourselves therefore with an outline of a scheme which is as close as possible to the scheme published in the report but which eliminates those features of dual government that seem to us to imperil the

success of its practical working in existing conditions. We will deal with the scheme under the following heads —

- (1) Structure of the provincial executive ;
- (2) Legislation ; and
- (3) Supply.

*Structure of the provincial executive.*

5. We recommended a provincial executive very much on the lines of that described in paragraph 217 of the report. The Governor will have a council with an equal number of official and non-official members, the latter being selected by him from the elected, or in the Punjab, from the elected and nominated, members of the legislative council. We would do away with the distinction between reserved and transferred subjects, and it should be open to the Governor to give any portfolio to any member of his council, whether he be official or non-official. We attach the greatest importance to the non-official members being in the same position and drawing the same salaries as the official members. They would be responsible ultimately to the Secretary of State, but they would necessarily be influenced by the opinions of the legislative council. It is not conceivable to us that the Governor would choose as his colleague elected members of council who were not representative of a substantial body of opinion, because he will have to co-operate with them in his relations with the legislative council. The selected members would be responsible to the electorate in the same way as the ministers under the report scheme (so far as the term responsibility can apply) in that they would have to seek re-election at the end of the life of the council. In this way a unitary Government would be secured. The Government would further be kept in touch with the legislative council by standing committees and under secretaries taken from the council as in the scheme of the report. The standing committees will be a real nexus between the legislative council and the executive government. Sir Harcourt Butler desires to note that in the United Provinces the experiment has been tried for some months of a standing committee of finance which consists of the 6 secretaries to Government, and 6 members elected from the legislative council, and which meets

every month. All important proposals of expenditure are referred to the standing committee for advice. Sir Harcourt Butler considers that the scheme has worked extremely well so far and has led to real co-operation between the council and the executive government. We accept the proposals of the Report as to the size and general constitution of the legislative council subject to the differences necessitated by provincial conditions which are now being examined by Lord Southborough's committee. We wish to see a substantial elected majority and we wish to give the council very real powers in the matter of legislation and supply. We urge that this constitution will provide an executive, which, though responsible to the Secretary of State, will be largely accountable in practice to the legislative council. And we believe that this will be a more liberal system in practical working during a period of transition than the scheme of the joint report, in that, in the words of the announcement, it will associate Indians with every branch of the administration. We would only reserve to the Governor the power which he has at present under section 50 of the Government of India Act, 1915, of over-ruling his executive council. We consider that there is immense advantage in maintaining the exact formula by which Parliament has defined the circumstances in which it holds that exceptional powers are justified.

### *Legislation.*

6. We have already outlined the constitution of the legislative council. We accept the powers of legislation proposed in the joint report reserving to the Governor the right of veto.

As regards affirmative legislation, we are prepared to accept the grand committee as in the report though recognizing the force of the objections urged against it; but we think that the Governor should have a perfectly free hand in the selection of the members nominated for the grand committee and we consider that no useful purpose will be served while friction may often be engendered by a final discussion. Sir Reginald Craddock prefers the scheme described in paragraphs 10 and 11 of his minute, dated the 29th November 1918, and we should be prepared to accept it as an alternative. We recommend that the Governor's power of certification should

be defined in the terms used in section 50 of the Government of India Act, 1915 *i.e.*, when the safety, tranquillity or interests of his province, or any part thereof, are or may be essentially affected. On an issue capable of such clear definition we consider that there should be no appeal from the Governor's decision.

It is part of our proposals that the existing powers of the Governor-General in regard to ordinance and of the Governor-General in Council in regard to regulation should remain unimpaired.

### *Supply.*

7. We would allow the budget to be voted by the legislative council, reserving to the Governor-in-Council powers of restoring the original budget provision on occasions covered by the terms of section 50 of the Government of India Act. In regard to financial procedure, we desire to follow as nearly as possible the practice of the House of Commons, and would invite attention in this respect to the criticisms of the Bombay Government in paragraphs 9-11 and of the Bengal Government in paragraph 31 of their letters on the reforms scheme, dated the 11th November 1918 and 15th October 1918, respectively. We also consider that supplementary supply should be voted by the council, subject to the reservation to the executive of necessary powers in regard to emergent and minor expenditure. It is one of the complaints against the present system that lapses of large sums occur during the financial year and that they are reappropriated without reference to the council, or even to the finance committee.

### *Resolutions.*

8. We accept the recommendations of the joint report in regard to resolutions.

9. We trust that our scheme will be in sufficient outline. We do not regard it as more than a transitional scheme and we recommend that it may be adopted only for a period of years in the course of which experience will be gained on the many points of which we are necessarily in ignorance at present. The advantages of the scheme are that it is based on experience rather than on theory, that it will associate the

Indians with government more effectively than will the scheme of the report, that it will avoid the admitted dangers of dual government, and the inevitable friction between the official and non-official elements of government and foster a spirit of harmonious co-operation, that it rests on a system understood by the people, that it is capable of expansion in the light of experience subject to the realisation of the conditions of progress set forth in the announcement of the 20th August 1917.

10. His Excellency has asked us to apply the following tests to our proposals.—

Firstly, will it be possible under it to fix responsibility on Indians with regard to any particular question of policy?

As regards individual responsibility in the executive council our answer is in the negative; also that the announcement does not require it, nor does the scheme of the report secure it (*vide* paragraphs 219, 221 and 240) but the responsibility of the individual in the legislative council will be manifest from the proceedings.

Secondly, does it provide machinery by which a greater area of responsibility can later be transferred?

Our answer is in the affirmative. We do not feel competent to predict future developments or to fix a time-table, but the machinery can be adjusted to meet the developments contemplated in the question—

- (a) by increasing the number of subjects in non-official members' portfolios,
- (b) by decreasing resort to the use of the powers of the Governor in regard to certification and of the Governor in Council in regard to the budget,
- (c) by giving more effect to resolutions, and the advice of non-official members in matters of policy, and
- (d) by increasing the number of councillors chosen from the elected members of the legislative council.

Lastly, does it lead up gradually to a stage under which full responsibility can be attained by Indians in the provincial sphere?

The answer is in the affirmative.

## THE INDIAN CONSTITUTION.

In answering these questions we understand that the term Indians includes non-officials of all races.

11. We conclude by re-stating our general position. We are drawing up at the request of His Excellency the Viceroy a scheme alternative to that of the report which has been so widely criticised not only by the great majority of local Governments but by many shades of opinion, especially in regard to the novel form of government known as dual government. Except in the matter of the control of the legislative council over supply in transferred subjects, a control which in practice is not often likely to be exercised against the men chosen from the elected members of the council, we consider that our scheme is at least as liberal and progressive as that of the report. It does not comply with the test of responsibility as defined in the report; but as pointed out by more than one local Government the definition of responsibility in the report is a narrow definition the cardinal conditions of which are non-existent at the present time and cannot be created for some time to come. The definition also overlooks the necessity proclaimed in the announcement of the principle of association and co-operation. We maintain confidently that in any case our scheme is a substantial step towards realising the policy of the announcement and pays due regard to the conditions of progress laid down in it.

M. F. O'DWYER.  
HARCOURT BUTLER.  
REGINALD CRADDOCK.  
B. ROBERTSON.  
N. D. BEATSON BELL.

*\*Minute by the Chief Commissioner, Central Provinces.*

I accept the transitional scheme set forth in the minute. But I am unable to concur in the line of further development outlined in paragraph 10(d). I should prefer to await the experience gained during the initial period and to leave it open to adopt the dualistic plan of the joint report, despite its admitted drawbacks, as a method of conferring responsibility in progressive stages. Paragraph 10 (d), so far as I can see, leads us to the final stage too precipitately.

B. ROBERTSON.

## VI. Minute by the Governor of Bengal and the Lieutenant Governor of Bihar and Orissa. January 16, 1919.

When the question of reform was discussed by the Heads of local Governments assembled in Delhi last year general agreement was reached on the basis of the procedure outlined in paragraph 217 of the joint report. A more rapid advance, however, has been advocated by the authors of the joint report and we think that although in theory the whole question is still an open one, the fact that the proposals in the joint report have been prepared by His Excellency the Viceroy and the Secretary of State and have been published with the permission of the Cabinet has given rise to the confident expectation that these proposals, or something equivalent to them, will be carried into effect. If any material abatement were now made, it would be believed by almost all educated Indians that the Government had been guilty of a breach of faith, and that the scheme had been put forward merely with the object of keeping India quiet during the war. It seems to us infinitely better that we should go further than we should otherwise have deemed it expedient to do rather than lay ourselves open to such a damaging imputation, and from this point of view we are prepared to support the scheme put forward in the joint report as preferable to any other scheme which has been devised as providing approximately the same extension of popular power.

2. We prefer the general plan of the scheme propounded in the joint report to that which has now been put forward, because the former reserves for the executive government full control over the really essential subjects, while giving to the ministers (within very wide limits) full control over the transferred subjects and thereby enabling them to combine power with responsibility. This is not only more in accordance with the pronouncement of the 20th of August 1917, but it will serve more than anything else to turn the Indian politicians into practical men and to prevent wild proposals from being pressed by them. There will also, we think, be less chance of discord under this scheme than under the alternative one where non-official members of the executive council will have their say in all matters—and will naturally press the

views of their colleagues in the legislative council—without having the power to carry them against the official members. It is true that if the scheme of the joint report be adopted there will be continued agitation for an increase in the number of transferred subjects. But under the alternative scheme there will be an equally strong agitation for an increase in the number of non-official members of the government; and concession to that agitation would be far more dangerous, as it would involve a sudden transfer of all power from the official to the non-official members, subject to the power vested in the Governor by section 50 of the Government of India Act, which however he could exercise only on very special occasions.

3. Under the scheme of the joint report ministers will owe their appointments to the Governor. It may be presumed that they will be reasonable men who will reciprocate a policy of good-will and mutual respect and accommodation, and we regard many of the objections to the scheme as theoretical and not likely to occur in practice. For instance, much has been made of the difficulty of separating transferred from reserved subjects, but if the fact that subjects overlap does not prevent them from being distributed among different members of council under the existing system of council government, it is not clear why it should prevent them from being distributed between members and ministers. Moreover, in actual practice, except on the technical question of financial regularity, the members in charge of the subjects which it is proposed to transfer seldom have to refer their proposals to other Departments. In the small number of cases where there is real overlapping the procedure laid down in paragraph 221 leaves the ultimate decision with the Governor.

4. It is not our intention to write a detailed criticism of the proposals embodied in the memorandum now put up by certain local Governments; but since our dissent from them is necessarily based largely upon the objections to which they are open, we would point out one defect of a serious nature from which they suffer. The authors of the scheme seek to avoid making any part of the executive responsible to the legislature, and since they confer upon the legislature the power of refusing supply they are driven back upon the



expedient of authorising the Governor in Council to reverse decisions of the legislature. If in practice it was found possible to exercise this power upon all occasions on which the executive government thought it desirable, the result would obviously be that the authors of the memorandum had taken away with one hand what they had ostensibly given with the other. But would it be possible in practice for the Governor in Council to exercise this power upon other than exceptional occasions? We think not, and in the result, therefore, it would be found that in their anxiety to avoid making any part of the executive responsible to the legislature, the authors of the scheme would have succeeded in making the whole of the executive amenable to the legislature. We think that this is a serious objection to the scheme.

5. We have perhaps said sufficient to justify our dissent. We readily admit that the proposals in the joint report have no parallel elsewhere; but neither has the problem which it is desired to solve—nor, might it be added, has the scheme which is now put forward as an alternative.

RONALDSHAY.

E. A. GAIT

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## VII. Government of India's First Despatch on Indian Constitutional Reforms, March 5th, 1919.

TO THE RIGHT HON'BLE EDWIN MONTAGU,

*His Majesty's Secretary of State for India*

*Delhi, March 5, 1919*

SIR,

WE have the honour to lay before you our views upon the important questions raised in the Report on Indian constitutional reforms, dated April 22, 1918, by His Excellency the Viceroy and yourself.

### PRELIMINARY.

2. *Reception of the Report.*—The Report itself was published in India on July 8, 1918 and you will expect us to give you as clear an impression as we can of its reception. The non-official European community took some time to form their opinions on proposals so intricate and so far-reaching. Indian opinion declared itself more rapidly, and from the first there ensued a clear division between the moderate and the extreme political parties. The former declared definitely for the Report, with certain reservations, the latter against it. The strongest expression of the latter view occurred in a letter published even before the Report appeared, urging that anything which originates with foreigners should be rejected as violating the principle of self-determination. The most advanced Bengal politicians adopted an attitude of uncompromising opposition. In Madras the recognised leaders of the advanced party had some difficulty in preventing the special conference which was held to consider the proposals from taking the same line. But the more responsible section of the party declared that, while the proposals were disappointing and unsatisfactory and required radical modifications before they could be held to constitute any substantial step towards responsible government, effort should be concentrated on obtaining such modifications rather than on the wholesale rejection of the scheme. The attitude of the

moderate party, which we believe includes the ablest and most respected Indian opinion, was far more favourable to the Report. They welcomed its proposals as a real and substantial step towards the progressive realisation of responsible government in the provinces, and the modifications which they urged were, with the exception of those affecting the Government of India, concerned with the details rather than the essentials of the scheme. Opinion of this sort is fairly represented by the resolutions recorded by the majority of the non-official members of the Indian Legislative Council, of which we attach a copy. The independent line adopted by the moderates had for some time a restraining influence on the other party. The tendency which had at first been apparent to flout temperate opinion gave place to a desire for conciliation; and at the last moment efforts were made to induce the moderates to attend the special congress held at Bombay towards the end of August to consider the proposals. These efforts failed, but the abstention of the majority of moderates was not without effect. The leaders of the special congress made an appeal to moderates throughout the country to rally to the national association. There was no talk of rejecting the reform proposals. They were still declared, as you will gather from the summary of the resolutions which we append, to be disappointing and unsatisfactory; but the general decision was that with somewhat radical alterations they could be accepted as forming a substantial step towards responsible government. The change of tone did not persuade the moderates to come in, and they held a conference of their own at Bombay early in November. The resolutions passed by it will be found among the enclosures. The last of this series of meetings was the ordinary session of the Congress which met at Delhi in December. The spirit of toleration was no longer in the ascendant and in spite of all efforts to the contrary the most radical elements of the extreme party threw over most of their recognised leaders, and advanced claims far beyond any made at Bombay by demanding the grant of full responsible government in the provinces at once. We attach a copy of the resolution passed.

3. *Indian Opinion.*—Thus it may be said that while the most vocal sections of Indian opinion unite in claiming a further advance than has been proposed in the Report, there are between the attitude of the moderates

and that of the more extreme politicians marked differences which we shall now explain. Both parties agree in urging that changes giving some measure of popular control should be introduced into the Government of India from the outset: and that the Government of India, acting under the control of the legislature, should enjoy the same power of regulating the fiscal policy of this country as the governments of the self-governing Dominions. There are also numerous points of agreement in matters of detail, but in regard to such questions of fundamental importance as the Council of State, the grand committee, the budget procedure, the relations of the Governor to his ministers, and a statutory guarantee for the grant of full responsible government within a fixed period, the two parties take very different lines. The extreme party would have no Council of State and no grand committee, and they desire to give the legislature complete control over the budget, and to make the Governor a purely constitutional Governor in relation to his ministers. As these demands, if satisfied, would give them complete control over legislation and finance, it makes little difference whether they claim complete responsible government at once or after a limited period. On the other hand the moderates accept the principle of dualism in government, and in the provincial sphere they merely press for such changes in detail as equality of status between councillors and ministers, reconsideration of the proposal to to appoint additional members without portfolios, the selection of heads of provinces from the ranks of public men in England, complete provincial autonomy in respect of transferred subjects, and the largest possible extension of the list of transferred subjects. Another phase of opinion, however, is represented by the memorial which we enclose from certain landholding members of the Indian Legislative Council who ask that progress should partly take the form of converting the leading zamindars into independent chiefs: a proposal clearly not in keeping with the principles set forth by His Majesty's Government. The great majority of the landholding class are more conservative. They have said little in public and are doubtful of their own preparedness to take their proper place in the forward movement. But they are unmistakably proud that India has been offered this signal mark of confidence, and in no sense hostile.

4. *Non-official European opinion.*—The non-official European community was at first disposed to question the wisdom of raising the subject of reforms during the war, but with the change in the situation in Europe this criticism lost much of its force. There is dissatisfaction with the proposal that the community, which forms the only element in the population accustomed to the working of responsible government, should not elect its own representatives on the provincial councils. They claim a separate electorate and representation in proportion to their importance rather than their numerical strength ; and they doubt whether even this will sufficiently secure the interests of trade and industry. They think that the scheme as a whole is ingenious but too complex ; and they fear that it may result in the transfer of power to the advanced political section to the detriment of the masses, who have no desire for any change in the system of government. They also dwell on the difficulty of presenting their opinion until the proposals in respect of electorates and the division of functions have been completed.

5. *Official opinion.*—Official opinion can be gauged only from individual deliverances. We think that the Bengal Government have endeavoured to summarise it faithfully in para. 3 of their letter. It is generally critical of the scheme ; but we desire to take this opportunity of controverting the suggestion that has found some currency in this country that the criticism proceeds from a purely selfish point of view. Such a view is unfair to a body of men who have served India faithfully and have its real welfare strongly at heart. There is no justification for the charge that searching criticism of the particular proposals in the Report implies any opposition to the underlying policy. The difficulties of the problem loom large with those on whom the burden of administration now rests ; and it is, we believe, their pride in and affection for their work which has made them the most anxious critics of far-reaching innovations. The permanent British official in India has not as a rule taken any part in the democratic institutions of his own land, and is frankly sceptical of their suitability to an eastern country. By the nature of his work, he comes into touch with the vast masses of the people, who have no political aspirations, rather than with the more advanced thinkers. He apprehends that the former will suffer from the administrative inex-

perience of the latter : and he is anxious for safeguards which will protect them, while at the same time securing the standards of thoroughness and impartiality in public business to which he has been trained. By all the best elements in this class, the declaration of August, 1917, is accepted, and the need for advance is admitted ; but the proposals of the Report are commonly criticised as going beyond the present needs of India.

6. *Local Governments' opinion.*—The cautions of the official mind are crystallized in the opinions of the local Governments. On their first perusal it must have disappointed the authors of the Report to find that the provincial Governments had devoted themselves so largely to destructive criticism. We do not think, however, that this was unnatural. Their opportunities for constructive work had come earlier ; and their proposals, both individually and at the conference of Heads of provinces which met His Excellency and yourself in January, 1918, had been among the materials on which the conclusions embodied in the Report were based. They might thus not unreasonably feel that there was no further occasion for them to set out alternative schemes ; and that the best service they could render us was to apply themselves to a vigorous and searching examination of the Report in detail. In this task, whether we agree with them or not, we must recognize the weight of their influence. The local Governments are repositories of practical first-hand experience of the working of the administrative machine. They know its limits and its possibilities, and the attitude of different sections of the people towards it. They can speak with intimate knowledge upon much that in the Report had to be dealt with on very general considerations. We feel that we owe all respect to their criticisms in detail. In this despatch therefore, although we have not handled them *seriatim*, we have attempted to deal with every point of substance that has been taken by a local Government. Their great value has been, not to throw doubt on the principles which we accept and which their examination has in no wise shaken, but to make us pause and remove defects which such examination reveals. The opinions of the provincial governments, as received by us, are attached to the despatch.

7. *Position of the Government of India.*—Lastly we come

to a statement of our own position. When these questions of constitutional reform were under consideration last year the main responsibility rested upon the two authors of the Report. The members of the Government of India were indeed kept in close touch with the deliberations, and no important conclusions were arrived at without reference to them. They have also in their despatch no. 6, dated May 31, 1918, cordially supported the general policy which the Report embodies. We take our stand on that despatch. We are convinced that the time had come for the definition of our goal in India, and we can conceive no other goal, consistent with the ideals of British history, except that the people of India, helped and guided by us, should learn to govern themselves. Whether their national life will flow into the precise constitutional moulds to which Englishmen by tradition are attached, or whether—as we think equally possible—it will ultimately work out for itself free institutions of a distinctive type, time alone can tell. Nor need we speculate whether India is going to borrow our history. Our clear duty is to put her into the way which we believe to be the best, and to allow the character of the nation, as it grows and is welded by experience and trial, to deflect our present methods gradually and intelligently towards ideals which it will adopt as its own. We regard it as beyond question that the first stage of advance must be a generous one, undertaken at the earliest possible moment. To postpone it now would be a confession of mistrust of our own work, and would alienate those classes in the country to whom we must look for the leadership of the new movement. We should particularly deplore any argument for delay, based on disclosures of revolutionary conspiracies which are utterly foreign to the real life of the people, and confined to an inconsiderable section. We believe indeed that, while it is necessary to deal firmly with crime arising out of these conspiracies, repressive measures, unless coupled with definite steps in the direction of political advance, can provide only a temporary remedy. There probably would be no point of time at which we should not feel that something still remained to be done by way of preparation for the beginnings of popular administration; but we must trust to perfect our work in co-operation with Indian public men, and we must be content to believe that we have laid our

foundations well, and that they will bear the new superstructure. In all this we feel that we are moving with a spirit which is stronger than our calculations ; and we accept whatever lies ahead. But that consideration only adds to the weight of responsibility which lies upon us when we come to advise upon the details of the plan of advance. To the form of provincial government which the Report sets up as the main vehicle of progress we have nothing to oppose ; we have seen no alternative which in any way competes with it. But we can best fulfil our task and discharge our responsibility by helping you to develop the new system into a working proposition. It is a novelty in constitutions ; and none of us can prophesy the manner of its growth. But there are to our minds certain universal tests of administrative machinery : its smoothness or friction in working, its burdensomeness on the people or the reverse, its educative value, and its capacity for further development. To every detail of the scheme therefore we have applied these tests, and our advice is based on its response to them. It has been no purpose of ours either to whittle down the scheme or to expand it. We take the scheme in the Report as one which, in all essentials, has our full adherence ; and our sole aim has been to translate it into a working plan which, while free from obvious defects, will be in accord with the policy of His Majesty's Government.

8. *Scope of this despatch.*—In the present despatch we shall address ourselves first to an examination of the question of the type of government to be set up in the provinces, comparing it with any alternatives before us and giving our reasons for the preference which we express ; and shall then go on to discuss the details of the scheme. In later despatches we shall deal successively with the reports of the subsidiary committees which have been at work under Lord Southborough ; with the questions affecting the Princes and Chiefs ; with the text of the Bill which will be presented to Parliament ; and with any other matters remaining for consideration. In these, especially as we have not yet examined Lord Southborough's committees' recommendations, we may find it necessary to revert to questions of policy, and to put forward further suggestions upon details. Endeavouring, as we have done, to forecast the practical working of the new arrangements, we are desirous of throwing



much of the procedure into draft regulations, draft instructions, or subsidiary narrative, which can be referred to when the proposals come under the scrutiny of Parliament. It seems to us of much importance that the mechanism of the new government should be foreseen and described as completely as possible, for the assistance of those who have to decide on the necessary legislation. Much must of course be left to practice and precedent, but even so, it would be inconvenient to set out in the present despatch, confined as it is to the main features of the scheme, all the considerations to which we wish to invite your attention.

### TYPES OF GOVERNMENT.

9. *Case for a dual executive.*—By common consent the pivot of the scheme set out in the Report is the type of government proposed for the provinces. Discussion in India has largely focussed on this part of the project. It has attracted the bulk of the criticism which has been offered by local Governments; and it is a feature, novel and untried, regarding which we can readily understand that outside opinion is most exercised. We make no apology therefore for putting it in the forefront of our own examination of the scheme. We shall endeavour to show that, as we view the problem and the materials for its solution, a dual executive is in theory the best, and in practice the only, method open to us; that rival schemes which aim at a unified government fail to attain either their own objective or the purposes of His Majesty's Government; and that dualism, despite its novelty and its limitations, is the key to a practical system of administration which we are prepared to support. Finally we conclude that, the less it is moulded into an artificial appearance of unity, the better it will serve its purpose and the easier will be the judgment of the future upon the results of this great enterprise.

10. *The aim and the conditions.*—We start on the one hand with the declared intention of His Majesty's Government to seek "the progressive realization of responsible government" in India; and on the other with the facts, already set out in the Report, that India is at present ill-prepared by lack of education and political experience, and by the racial and

religious divisions of her people, to sustain such a system in anything like completeness. As we shall have occasion to show you, there have been differences of opinion as to the precise meaning of the announcement of August 20, 1917. For ourselves we take it to mean the transfer of a gradually increasing share in the work of government to Indian administrators who will have openly to justify their policy and their actions to Indian electors. The class of workers may at first be little more than the existing intelligentsia, leavened with official criticism, but it will steadily enlarge as the political sense spreads through the new electorates. Such administrators will no doubt be directly responsible to the council from which they will be chosen, but though under the proposals in the Report the council will be in the main elected on a liberal franchise, we must recognise that the electorate will for some time be unable either to formulate their requirements intelligently, or effectively to impose a mandate upon their representatives. This cardinal fact differentiates the degree and the kind of responsibility which we can at the outset introduce from that which we hope will be the eventual resultant of the new system, and imposes on us the duty of ensuring that the forces which now hold the administration together are not withdrawn before satisfactory substitutes are ready to take their place.

11. *Essential features of the Report.*—The existing system rests, as the Report shows, firmly on the statutory control of Parliament. The policy announced in August, 1917, means the gradual transfer of control from Parliament to legislatures in India, and the gradual replacement of the nominated governments now in office by governments of the representative type. The main proposal in the Report is that this change shall be effected by a process of dividing the sphere of government in the provinces between two authorities, one amenable to Parliament and one amenable to an Indian electorate ; and that future progress shall be by the transfer of further portions of the field of administration from one authority to the other, after regular survey of existing conditions by a commission periodically appointed by Parliament. These are the essentials of the scheme to which the name "dyarchy" has come to be applied by usage. We see no real objection to the term, which has, we believe, the sanction of eminent historians, and which, as you will gather from the enclosures to this despatch,

has by now securely established itself in India's political diction.

12. *Division accepted in principle.*—It follows from our interpretation of the announcement of August, 1917, that we are at one with the authors of the Report in the imperative necessity for some division of the field of government. Undivided government means the common accountability of all its members for all its policy, and there is nothing for which the electorate can fasten the specific responsibility on to their own representatives. But the bifurcation of the government which is proposed in the Report has encountered so much criticism that we feel bound to examine it from both a theoretical and a practical point of view. Our first line of argument, therefore, will be to bring it into relation with first principles. The main objection running through all the criticisms is one and the same, *viz.*, that the work of government is of its nature impartible. It is easy to overstate the argument, for in practice the functions of government can be and often are partitioned, as they are between local bodies and between departments. Nevertheless it is true that a common thread runs through all the functions of government; that no function of government acts *in vacuo* and that each reacts on some other function. that the various functions cannot act at all unless there is some one authority to harmonize them, and that there cannot possibly be two independent governments in the same State. All that these truths imply, however, is that the two sets of functions can only be exercised properly by the two different authorities if there is a paramount governmental power over them both:—in this case Parliament and its agent, the Government of India. From this follows of course the further consequence that, while dualism lasts, the part of the government which is responsible to the electorate cannot attain complete responsibility; but in this there is no condemnation of the principle, inasmuch as dualism is avowedly a device for a period of transition and disappears as soon as fitness for full responsibility is established. Our first conclusion, therefore, is that there is no theoretical difficulty about a division of powers provided that the state of things which results from it is regulated and safeguarded by Parliament.

13. *Alternative methods of division.*—In making a division of powers we have a choice of two methods. It is possi-

ble to take a particular group of functions and hand it over to the new authority ; this we may call the vertical method of division. It is also possible to entrust the new authority with subordinate powers in all functions ; this we may call the horizontal method of division. The Report adopts the former plan. Some of our critics press the latter, and would prefer to give a certain measure of power in the whole field of government rather than a larger measure in some selected areas. In urging this method upon us, those who favour it undoubtedly aim at a unified government, and overlook the dualism that is inherent in their own detailed proposals. Leaving them, however, to this confusion of thought, we have to see for ourselves whether the vertical or the horizontal method is theoretically the better. If we apply the tests suggested in paragraph 7 above, it seems to us that the scale turns definitely in favour of the former. It is the more educative, though it may be at the outset the more onerous ; it certainly lends itself by far the more readily to ordered progress ; and though friction is unavoidable in either method, it should be less when departments are divided off than when both authorities are at work in the same department. On exclusively theoretical considerations accordingly our conclusion is against the horizontal division of functions.

#### UNIFIED GOVERNMENT.

14. *Typical unified government.*—Such purely abstract reasoning will not take us far. Can we conceive a horizontal division of the work of a provincial government which would in practice give us unity and not dualism? No concrete proposals which we have received answer this question, and we know of no existing form of polity which would answer it, with the doubtful exception of the Egyptian system of Advisers. We are driven therefore to draw an imaginary picture. Very briefly, it would be a picture of a Governor in Council with complete legislative powers of his own, delegating authority in every branch of government to a subordinate executive with a subordinate legislature. The ordinary executive work of government would be done by ministers, except for any specified class of business which the Governor in Council decided to keep in his own hands.

All proceedings of ministers would be submitted to the Governor in Council, who could veto or alter any order or issue any orders which he considered that ministers had wrongly failed to make. There would also be provisions for appeals from orders of ministers to the Governor in Council. The advance from this state of affairs to real responsible government would proceed by means of the gradual withdrawal of the Governor in Council from interference, from the passing of ordinances, from the issuing of orders over ministers' heads, from altering the financial or legislative proceedings of the legislature, and so on. The official government would exercise this growing self-restraint in proportion as it found the ministers waxing wiser in administrative experience and responding to the increasing political intelligence of the electors. The time would come when the Governor in Council would disappear, on some future statutory commission being satisfied that ministers were competent to carry on the whole work of government.

15. *Criticism of such a plan.*—Though we have sketched out a possible type of a government which would comply literally with the announcement of August, 1917, we frankly regard it as wholly impracticable in present circumstances. It has theoretical merits as a school of systematic training in administration; but these would be swept away by the intolerable friction and struggles for power which it would provoke. It would not be accepted by any of the Indian political leaders, and it would start with an impossible handicap of opposition. It may seem then that our picture is superfluous: but our purpose in drawing it has been to bring out clearly the contrast between the type of unified government which complies with the announcement, and the *quasi*-unified government which we have been strongly urged to prefer to the dualistic scheme of the Report. The type of government which we have described, whatever its drawbacks, at least fulfils the requirement, on which so much stress is laid, that the major executive shall be capable of acting as one. The protagonists of unified government seem to us in their concrete proposals to have failed to secure this, their own main desideratum.

16. *Conference with local Governments.*—We turn now to an examination of the proposals which have been pressed upon us as intended to secure a unified government, in

substitution for the scheme in the Report. They are primarily contained in the opinions of the local Governments ; for, as you will see from the collection of their letters, all the provinces except two declared for a unified system. On receipt of provincial governments' replies the Government of India met all Heads of provinces, except the Governors of Madras and Bombay, in personal conference at Delhi during the week beginning January 13, 1919. Lord Pentland had already declared himself against a dual government, and it was of importance that he should be present in Madras to receive Lord Southborough's committees. Sir George Lloyd was unfortunately prevented from attending the conference by industrial disturbances in Bombay city. His Excellency the Viceroy in opening the conference drew attention to the destructive criticism which local Governments had furnished and invited the Heads of provinces who were present to put forward constructive proposals which would be free from the objections they took to dyarchy. His Excellency's statement of the position is attached to this despatch. After preliminary discussion under the chairmanship of Lord Ronaldshay, five out of the seven Heads of provinces who were present, namely, the Lieutenant-Governors of the Punjab, the United Provinces and Burma and the Chief Commissioners of the Central Provinces and Assam agreed upon certain proposals which are formulated in the minute of January 15, 1919, which we enclose. The Governor of Bengal and the Lieutenant-Governor of Bihar and Orissa for reasons given in their separate minute of January 16, also enclosed, dissent from the conclusions of the majority of their colleagues.

17. *Majority minute by Heads of provinces.*—We have now to lay before you our views upon these important documents. The minute of the majority was framed after mutual consultation ; and saving in so far as it was drafted without the assistance ordinarily available from secretariats and under unavoidable pressure of time, it may be read in modification of the official letters from the five local Governments for which the signatories are responsible. There is no need for us to lay stress upon the authority attaching to the joint opinion of the five experienced administrators who have signed the majority minute. They have, as they explain, approached these difficult questions of constitutional re-

construction far less from the point of view of political theory than with an eye to what they judge to be the practical requirements of the situation. They point out with some force that the novelty of the proposals in the Report has aroused apprehensions. They dwell on the prospect of discord and friction. They emphasise the inexperience of the electorate. To use their own words, they have themselves sought to find a scheme which is as close as possible to the scheme published in the Report but "which eliminates those features of dual government that seem to us to imperil the success of its practical working in existing conditions."

18. *Unified government proposed therein.*—The typical government which they propose to constitute consists of a Governor with a council composed of an equal number of official and non-official members. The latter would be selected by the Governor from among the elected (but in the Punjab from both the elected and the nominated) members of the legislature. There would be no division of functions of the government into two categories, and the Governor would be free to allot at his discretion any portfolio to any member of his council. The idea is that the non-official members of the executive would be chosen by the Governor from persons representing a substantial body of opinion in the legislative council, in which way they might be expected to be in touch with that body and to be influenced by its opinion. On the other hand, inasmuch as they would be appointed by the Governor as councillors and not as ministers, they would be responsible through the Governor to the Secretary of State. In this way it is contended that a unitary government would be secured, which, though responsible to the Secretary of State, would be largely accountable in practice to the legislature.

19. *Its suggested working.*—The legislature in the scheme proposed would have a substantial elected majority, and for the purpose of enabling the government to secure the legislation which it wants, the majority minute accepts the procedure by certificate and grand committee proposed in the Report, with certain modifications designed to give the executive a freer hand. Sir Reginald Craddock in this respect prefers the proposals made in his own minute of November 29, 1918. In the matter of supply the majority minute proposes that the legislature should vote the budget, but that

the Governor in Council should have power to restore the original provision in circumstances covered by the terms of section 50 of the Government of India Act, 1915. The five signatories claim that their scheme provides in the various ways that they enumerate for enlarging the sphere of responsibility, and that it can be relied on to lead up gradually to a system of full responsible government in the provinces.

20. *Our criticisms—(1) of principle.* Our criticisms of these proposals are of two kinds. The first and major criticism has reference to the answer which the minute returns to the first question propounded by His Excellency the Viceroy. The signatories acknowledge that their proposals do not enable responsibility for any act of actual government to be fixed on any member of the executive; but they go on to add that the announcement of August 20, 1917, does not require such a result, and that such a result is not attained in the scheme of the Report. They refer to the restrictions upon the responsibility of ministers contemplated in paras, 219, 221 and 240. Now, to take first this latter point, we recognise, as we have already said, that the unique circumstances of our scheme render it impossible that ministers should, during the period of transition, enjoy the same measure or character of responsibility as would be theirs under a genuine parliamentary system. None the less the fact that we cannot hope to attain complete success at the outset seems to us no reason for not shaping our course definitely in the desired direction; and this in our opinion is what the Report does. The authors of the minute, however, contend that the terms in which His Majesty's Government declared their policy in August 1917 does not require us to provide from the outset for a form of responsibility comparable to that of a minister of the Crown. They lay stress on the fact that in the announcement made in parliament prominence was given to the increasing association of Indians in every branch of the administration; and they argue that the true path of progress lies in associating Indians with the existing type of government rather than in altering that type by dividing the government in order to introduce responsibility. It seems to us that the five signatories attach to the term "association" a significance which it was not intended to bear; for to our minds it should be regarded as a means rather than an end. However this be, we entirely



dissociate ourselves from their interpretation of the intentions of His Majesty's Government ; we regard the announcement of policy in August 1917 as clearly contemplating some measure of responsibility for administrative acts as a feature of every stage in the progress towards full responsible government. It has been so interpreted by Indian opinion ; and any other construction would be keenly contested.

21. (2) of *working*—(a) *Not really unified government.*—The remaining objections which we have to take to the scheme set out in the minute are concerned with the prospects of its successful working in practice. In the first place we cannot admit that real unity has been attained in the executive. We feel that members of the executive appointed from the legislature, are bound to feel a real obligation towards that body ; that indeed is the reason for their appointment and they would not serve their intended purpose unless they felt such obligation. But every bond that attaches them to the legislature, which can be trusted to strengthen the ties by every means open to it, tends to pull them apart from their official colleagues : and once the stage is reached in which the non-official members of the Government feel their obligations to the legislature stronger than their obligations to their official colleagues, it is plain that a dualism will have in fact established itself. In this respect we hold that the scheme does respond to its own criterion, inasmuch as it tacitly admits a dualism which it would be better to recognize from the beginning. It will be dualism of a particularly unfortunate type ; for the two halves of the executive will have no separate spheres of work, and will be liable to come into conflict over the whole range of their duties. There is a specious air of coalition about the proposals ; but it would be a coalition without any of the forces which keep a coalition together, a forced and artificial union between two parties with totally different mandates, which could lead only to an impasse. The scheme thus fails to respond to its own criterion, as dualism is inherent in it, and in a form which to our thinking must in time reduce the executive to impotence.

22. (b) *Excessive dependence on certificate power.*—In the second place we cannot regard as satisfactory an arrangement which leaves the Governor in Council entirely dependent upon the use of his powers of certification for the purpose of

obtaining the legislation and the supplies which he thinks necessary. Except for the certificate power the executive will be at the mercy of the legislature and in the position condemned in Chap. VII of the Report. In the absence of any differentiation of subjects, and of any special facilities for obtaining supply for those subjects which are the special care of the official part of the executive, we should not be prepared to rely upon the certificate power as the sole effective instrument of government.

23. *(c) Progress not secured.*—Lastly, we cannot agree that the plan propounded in the majority minute presents a prospect of the continuous and ordered progress towards responsible government which is postulated in the announcement of August 1917. The means of advance which it provides are explained in para. 10 of the minute. Two of them are similar to those suggested in para. 14 above and, whatever they are worth, are at all events open to the criticism that they do not readily admit of observation or assessment. But we cannot agree that one of the stages of safe and ordered advance would be the increase of the number of councillors chosen from the legislature. So long as the executive acted as one government and decided matters, saving the Governor's over-riding powers, by majority vote, such increase would mean the sudden transfer of executive power to the members chosen from the legislature. Our judgment upon the majority minute may therefore be summed up by saying that we regard it in the first place as failing to lay any measure of definable responsibility for any act of government upon the representatives of the electorate: we therefore hold that it does not comply with the policy upon which the Home Government have decided. In the second place, it fails to fulfil what its authors themselves present as the paramount requirement of an undivided government, a unity which can, to our thinking, be secured only by a common allegiance and a common policy. In the third place, it affords no prospect of successful working without giving rise to such conflict and bitterness of feeling as may produce a deadlock; and in the fourth place, the scheme cannot progress in any direction except by one leap into full responsible government.

24. *Minority minute.*—For further pertinent criticism on these views, we have only to turn to the minute prepared by Lord Ronaldshay and Sir Edward Gait. They object to the

scheme of their five colleagues for several weighty reasons. Its authors, they say, "seek to avoid making any part of the executive responsible to the legislature, and since they confer upon the legislature the power of refusing supply, they are driven back upon the expedient of authorizing the Governor in Council to reverse decisions of the legislature." If this expedient is put into constant use, the apparent liberality of the scheme vanishes; if it is only rarely employed, the whole executive would in practice become amenable to the legislature, without being removable by it. The minority therefore accept the scheme of the Report as "giving to the ministers, within very wide limits, full control over the transferred subjects and thereby enabling them to combine power with responsibility." \* We need hardly say that the minority view has our entire concurrence.

#### DUALISED GOVERNMENT.

25. *Dualism definitely accepted.*—We return then to our proposition that it is only by a division of functions that we can give effect to the policy which requires some elements of responsibility, however imperfect at the outset the conditions of India may make it, to be introduced into the executive. Without bifurcation it is impossible to devise a Government which will remain partly responsible to the Secretary of State and Parliament and partly to the elective representatives of the people in India; and we are satisfied that the only practicable form of bifurcation is what we have called the vertical division of functions. We recognise the novelty of the proposal and the apprehensions which it necessarily must arouse in conservative minds. We appreciate the disadvantages of friction and difficulty which have been brought home to us in local Governments' letters. We reply, however, that the position is new in the experience of the world and that we can find no means whatever of fulfilling the charge laid upon us, as we understand it, otherwise than by dualising the executive. Risks and difficulties there undoubtedly are as there must be in any period of transition; but in no other scheme that has been devised would they be fewer, and in no other scheme is the path towards our goal so clear. As we shall attempt to show in our detailed examination of the scheme, the risks and difficulties can be materially diminished;

but those that remain have to be faced. If we were to halt now until we find the perfect way—if indeed there is any perfect way—we should lose the whole impetus of advance and embitter those whose hearts are set upon it. Let us provide to the best of our ability against the dangers which we foresee, and then go forward with courage in the confidence that experience and good feeling will overcome them.

26. *Its limitations need examination.*—Before proceeding with our suggestions for the improvement of the scheme in detail we propose to set before you some broad considerations on which, it appears to us, must depend the decision as to the degree of bifurcation which can be wisely and safely admitted in a scheme of Government that is to be capable of working in practice. Much of the criticism which the report has attracted is due, we think, to the interplay of two principles within it, and to some uncertainty in the minds of its readers regarding their reactions on each other. One of the principles is division in order to get a clear definition of the several responsibilities of the two parts of the Government. The other is union, in order to get association in aims and policy between the two parts of the Government. Critics of the scheme describe it as failing to secure the first, and as attaining the second only by artificial and dangerous assumptions. We are prepared to meet all such criticisms: but we take them as conveying a caution against an attempt to combine two distinct principles in such a way as to disguise or hamper the operation of either. Dealing as we are with wholly new conditions, we feel that the best hope of arriving at a right solution which can be defended on sound grounds is in the first place to examine dualism somewhat more fully in the abstract, and, if possible, to ascertain what are its inherent limitations.

27. *Typically dual government.*—A typical dual Government would, we conceive, have two separate legislatures and two separate executives. Each authority would make its own laws, control its own finance, frame its own budget, impose its own taxation, and raise its own loans. Each would have its own separate staff for the administration of the subjects allotted to it and its own methods of recruitment, pay and pension. The two authorities would in fact have clearly defined spheres of their own, and would work exclusively within them. But in as much as there cannot be two independent governments in

the same State it follows that both authorities must be under the ultimate control of some superior ; or, to translate the picture into constitutional terms, there would be on the one hand the Governor in Council and on the other the Governor with his ministers, while over them would be the Government of India, the Secretary of State and Parliament with ultimate controlling power to keep the two authorities from acting entirely independently of, and conceivably in opposition to, each other.

28. *Tested by suggested criteria.*—To such a typical system it is merely necessary to apply the tests of good government which we suggested in para 7 to see at once the necessity on practical grounds of modifying it in certain directions. To two out of our four tests indeed pure dualism responds admirably : it is clearly educative and it clearly admits of progression. But in its cost and complexity, and particularly in respect of its separate staffs, it would impose an intolerable burden on the people. And, as the Report observes (para. 246), the attempted separation of the orbits of the two authorities would deprive both of chances of association and consultation which are likely to be helpful ; while without such opportunities there would be nothing to mitigate the shock of the collisions when their orbits meet. Dualism therefore requires such qualification as will eliminate avoidable elements of hardship, while carefully preserving the educative value which consists in investing each of the two authorities with clearly defined duties and responsibilities. That association is valuable we recognise, but we look on it as a means rather than an end. It will help in the educative process by placing at the disposal of ministers the best trained administrative talent ; it will go far also to reduce friction. But above all things we must strive to avoid laying needless burdens on the people, until such time as they are able to enforce their own wishes and to defend themselves against the inexperience and possibly the self-interest of their nominees.

29. *Dualism—(1) in legislature.*—The precise application of these principles will be manifest when we deal with the details of the Report. But it will be helpful to carry them first briefly one stage further in relation to each of the main elements in the government. As regards the legislature both the Governor in Council and ministers clearly must have means of obtaining both the laws and

the supply which they require for their executive duties : there ought, as the Report says in para 215, to be for each half of the government, "some form of executive body with a legislative organ in harmony with it"; and to this extent the two organizations should be distinct, with distinct methods of response to the needs of the two executives. But the public interest demands that there shall be no conflict of jurisdiction and no clash of laws. There must be, therefore, some authority to decide between them. Once this is provided, there is advantage in allowing the two branches of the legislature to work as far as possible in concert in cases where no particular conflict of interest or opinion arises.

30. (2) *in executive*.—As regards the executive, the postulate that the system adopted shall be as far as possible educative requires that there shall be no doubt which of the two authorities settles a policy and carries it out and is responsible for it. Once that requirement is secured, such association as is compatible with it is a gain. But consultation should not be allowed to obscure the source of any single act of administration nor to diminish the clear responsibility of one or the other authority for it. There can be no such thing as majority decisions by the two halves acting together. At the same time the interests of the people require that there must be a power of higher control capable of intervening to prevent grave errors by either authority and to decide jurisdiction in cases of doubt or dispute.

31. (3) *in administration*.—The burden and complexity of pure dualism is seen most clearly in respect of the administration in detail. We cannot in justice to the people saddle them with two different public services, differently recruited, owing different allegiance and carrying out different policies. This aspect of the case is one in which the merits of defined responsibility must bow before the greater needs of protecting the people. The ministers must therefore, as we shall show hereafter, be required to take over the existing public services and to treat them on approximately the present lines.

32. (4) *in finance*.—Pure separatism on the financial side seems to us also an impossibility if the public interests are to be safeguarded. If the two authorities are to be free to discharge their responsibilities with reasonable liberty and avoidance of friction they should have separate resources, separate budgets,

separate balances and to an extent, which we discuss hereafter, separate powers of borrowing and taxation. But in the last resort other considerations come in ; and we think that to deprive ministers of official assistance in developing revenue and in controlling expenditure, besides being unfair to them, would be to court misfortune and to sacrifice the taxpayer, just as we should regret any arrangement which would leave the official half of the government without the criticism and suggestions of their non-official colleagues.

33. *Summary of the arguments.*—We are now in a position to sum up the conclusions which we propose to apply to the detailed proposals of the Report and to the criticisms which they have encountered. We started with the postulate that a share in the work of government was to be given to non-officials who are the chosen representatives of the people. But the electorate cannot at the outset be expected to know how to hold its representatives to account, and therefore the power of ministers, because it will not really be derived from the people, cannot at the outset be complete. They must be amenable to control ; in a word the whole problem is to reconcile their control with education through actual practice in the art of government. We concluded that a partition of powers is inevitable, although the process is attended by obvious drawbacks. We rejected the idea of such horizontal division of powers as would yield a truly unified executive. We rejected also the *quasi*-unified government proposed by the five Heads of provinces because it would not lead us where we wish to go. We were thus led directly to the vertical method of division which yields a dual government. We found on examination that pure dualism would be burdensome by reason of divided councils and the results of inexperience. What we seek, therefore, is such modifications of dualism as will introduce the necessary elasticity and get rid of its worst inconveniences without confusing or disguising the responsibilities of the two parts of the government. From this standpoint we now address ourselves to an examination of the details of the Report.

#### THE PROVINCIAL GOVERNMENTS.

34. *Questions of demarcation reserved.*—We reserve for further consideration in connexion with the report of Lord

Southborough's committee the difficult questions raised in paras. 212 and 213 of the Report as to the demarcation of the sphere of provincial business, whether in its legislative or administrative aspect. Our next despatch will discuss the principles and details of such demarcation, but it appears to us impossible to consider these till we have settled the structure and working of the provincial executives, and with this question we now deal.

35. *Appointment of Governors.*—The Report proposes to set up a single type of government for common application to the three presidencies of Madras, Bombay and Bengal, the three lieutenant-governorships of the United Provinces, the Punjab and Bihar and Orissa and the two chief commissioner-ships of the Central Provinces and Assam. Burma, on account of its peculiar circumstances, was left over for further consideration. The Lieutenant-Governor has informed us that he expects to be in a position to lay proposals before us shortly. We are doubtful about the application of the proposals in the Report to Assam, which exclusive of the hill tracts inhabited by primitive peoples seems to us too small an area to carry so large a superstructure. We are examining separately the question of the arrangements to be made for it. The Chief Commissioner of the Central Provinces has also urged that there should be a preliminary period of training before the scheme of the Report is brought into operation in that province. We consider, however, that there are no reasons for discriminating between the Central Provinces and the other major provinces in this respect. We therefore accept the proposition that in all the provinces except Burma and Assam the Head of the province should be known as Governor. The Report says (para. 218) "this common designation would not imply any equality of emoluments or status, both of which would continue to be regulated by the existing distinctions which seem to us generally suitable." As regards the appointment of Governors, however, it is clear from another passage (para. 161) that, although there is no idea of excluding the members of a permanent service from appointment to governorships, the intention is to assimilate the method of appointment of all heads of provinces to that of the presidency Governors. In any case it follows from the alteration of the title of the heads of provinces other than presidencies that the provisions of section 54 (2) of the



existing Act which require the incumbent of what is now a lieutenant-governorship to have served the Crown for at least ten years in India will become obsolete. We understand that no immediate change is intended in the existing practice by which the charge of the five provinces in question has always been held by men with long official experience in India; and we think that at all events for some years to come no such change is possible. While some of us would prefer to see the present statutory prescription retained, the majority of us agree to its abandonment on the understanding which we have just stated. We take this opportunity to note that all the three presidency Governments have called attention to the heavy personal burdens which the new order of things will impose upon the Governor; and we lay stress upon the need for securing for such offices alike the best talent which the services can furnish, and in the case of appointments from outside the services, men of the highest qualities and ripest experience.

36. *Their pay and status.*—In respect of the status and pay of Governors two local Governments have urged that no distinction should henceforth be made. On financial grounds alone we must resist this suggestion. The new changes in the government will in any case lay heavy burdens on the taxpayer and there is no need to swell them by increasing the pay of heads of provinces who are already well paid. Moreover, if equality of pay and status were once admitted, it would be difficult to resist subsequent demands for increased display and ceremonial and sumptuary allowances. At the same time it is evidently well to take this opportunity of raising the pay of the two Chief Commissioners above the level of that of members of presidency councils. Accordingly we recommend that while the pay of the Governors of the three presidencies should remain at its present figure of Rs. 10,000 and that of the Governors of the United Provinces, the Punjab and Bihar and Orissa at its present level of Rs. 8,333½, the pay of the Governor of the Central Provinces should be raised from Rs. 5,166⅔ to Rs. 6,000 and that of the Governor of Assam (assuming for the moment that the head of that province is so designated) from Rs. 4,800 to Rs. 5,500. The further suggestion has been made that all Governors should have the right of corresponding direct with the Secretary of State on matters in regard to which the

presidency Governors enjoy that traditional privilege. We see no immediate necessity for this.

37. *Composition of executive: adlati dropped*—The composition of the rest of the executive presents difficulties. The solution suggested in the Report was to institute a council in each province of one official and one non-official; to appoint for the administration of the transferred subjects one or more ministers according as the volume of work required; and to provide against the preponderance of Indian opinion which would occur in the joint deliberations of both halves of the government by the device of allowing the Governor to appoint one or two additional members of his government, without portfolios or votes, for the purpose of consultation and advice. No detail of the scheme has drawn more criticism than this. No local Government is really in favour of the proposed *adlati*; and, though probably for different reasons, non-official opinion is equally adverse. It has been pointed out to us that the officers in question would be placed in a very equivocal position: they would have no right of initiative, no defined duties and no vote: their sole responsibility would be to give advice, which the Governor could to some extent obtain from them in their substantive capacity; and their status as *quasi*-equals within the council room and subordinates outside it involves peculiar difficulties. We advise, therefore, that the proposal be abandoned.

38. *Council to be strengthened if Governor lacks Indian experience*.—There remains the difficulty, on which local Governments justly lay stress, of providing for the varying requirements of the different provinces. In view of our decision in the last paragraph we feel that it will certainly be necessary to find other means of ensuring that experience and knowledge of the official system have sufficient voice in the counsels of government. Accordingly for the three presidencies we propose that the executive council shall continue to be constituted as at present, in spite of the fact that some departments will be entrusted to ministers. In the remaining provinces we consider that, so long as no change is made in the practice of appointing a Governor with official experience of India, a council of two members, one official and one Indian, should suffice. If, contray to our intentions, any change in practice is made, then we think that the strength of the council should be brought up to the present presidency level.

No one can say how the new institutions will add to the labours of the executive. It is clear that the sessions of the legislature will be longer : that far more time will be consumed in consultations and committees : and that it will no longer be possible for the Governor, who will be the keystone of the new provincial system, to retain any portfolio in his own hands. We are convinced, therefore, that if the new complex administration of the future is to find time to adjust itself, a far more generous margin of time must be allowed than has been the case in the past. In this opinion we are supported by the letter from the Madras Government. We are not, however, all agreed in this recommendation. Sir Sankaran Nair would abolish the *adlati* and sees no reasons to replace them and Sir George Lowndes would replace them only by a personal secretary of high standing on whom the Governor should rely for advice.

39. *Qualifications for Council.*—We agree that the choice of an Indian member of the executive council should not be restricted to the members, elected or otherwise, of the legislature. Indeed, if an elected member were appointed to an executive councillorship, he should be required to resign his seat and not be eligible for re-election, for otherwise his position would approximate too nearly to that of a minister. Para 218 of the Report which deals with the Governor in Council does not refer specifically to the statutory qualifications for a councillorship which are laid down in section 47 (2) of the Government of India Act, 1915. Two out of the maximum number of four councillors must at the time of their appointment have had at least twelve years' service under the Crown in India. But the statement that "one of the two executive councillors would in practice be a European qualified by long official experience" has been construed as implying an intention of amending the statute. The reasons for continuing to appoint experienced officials to such posts are stated in para. 161 of the Report ; and we think they have great force. But inasmuch as no alteration of practice is intended, we question the expediency of making a change of form, which will be open to misconstruction both by Indian opinion and the services. The point is not one on which we are unanimous. The majority of us advise that the statutory qualification of twelve years' service in India be retained for one member of each of the provincial councils. If that is

done, we advise that one seat be similarly reserved by statute for an Indian. We suggest that the pay of executive councillors should be fixed at sums which we shall insert in the schedule of the draft Bill.

40. *Appointment of ministers.*—We come to the question of the appointment of ministers. The Report suggests (para. 218) that they should be appointed by the Governor from the elective members of the legislature, and for the life-time of that body; and that if re-elected they should be eligible for re-appointment as ministers. They would hold office not at the will of the legislature but at that of their constituents. Para. 260 adds that it should be open to the legislature after five years' time to place their salaries on the estimates, thereby converting them into parliamentary ministers, or for the Government of India, as a condition of a further transfer of subjects or otherwise, to require that their salaries should be so treated. We do not think that the intermediate position (due, we believe to the apprehensions expressed by Indian opinion as to the prospect of having to assume a fuller measure of responsibility) in which it is proposed at the outset to place the representative portion of the executive can on examination be sustained. The idea of amenability to constituents rather than to the legislature strikes us as strange to English political theory, and in view of the inexperience of the electorate compared with the legislature, and also of its communal character, as most unlikely to bear much fruit in practice. Apart from this, however, we agree with those local Governments who have pointed out that, whatever the initial position of ministers may be in theory, it cannot in practice but be one of amenability to the legislature which has power to grant or to withhold their supply. It is true that it is very hard to foresee how communalism in electorates and legislatures will deflect their working in India from the ways familiar to English experience; but we feel bound at all events to proceed on the assumption that a minister who finds himself at variance with the views of those who are in a position to control his legislation and his supply and to pass votes of censure upon his administration will recognise that he must make way for a more acceptable successor. That being so, we think that ministers must be assumed from the outset to be amenable to the legislature. It follows that they would not be appointed for the life-time of the legislative council but at pleasure they

would (in the absence of definite reasons to the contrary) be removable by an adverse vote of the legislative council ; and, following the accepted practice elsewhere, the Governor would have power to dismiss them if he felt that the situation required such a course.

41. *Their number and pay.*—While the members of the executive council would be appointed as now by His Majesty by warrant under the Royal Sign Manual, ministers, being the advisers of the Governor, would necessarily be appointed by the Governor. The question of their pay presents some difficulty. There is no real reason to prescribe for ministers the scale of salaries fixed for members of council. We feel, however, that if we were to ask you to fix beforehand for ministers a lower rate of pay than that sanctioned for councillorships, such a treatment of the situation, however well justified by practical considerations, would be misconstrued in India. We see, therefore, no alternative but to suggest that the number of ministers and their pay should be fixed by the Governor, after consultation with the prospective minister or ministers when they first take office, and placed upon the transferred estimates. We have no doubt that the Governor will give due regard to the considerations of the burden of work, the expenses of the position and so forth, which have always been accepted as relevant to the determination of the salaries to be attached to official posts. We do not suggest that the first ministers should offer themselves for re-election on taking office. Indeed, we question the expediency of perpetuating in India this feature of parliamentary tradition at all, and we would provide that ministers' posts should not be treated as such an office of profit under the Crown as disqualifies a member of the legislature from retaining his seat. There is one point to notice. In so far as some of the nominated members of the legislature will sit as representatives of interests for which no constituency can be found, it may be argued that they should not be penalised by ineligibility for the office of minister. Moreover, as we show later, it will be necessary to provide for the contingency of no ministers being temporarily forthcoming from among elective members. Both these reasons might be urged in favour of giving the Governor some discretionary power of appointing ministers from among the nominated non-official members. But Indian opinion attaches special importance to the repre-

## THE INDIAN CONSTITUTION.

sentative character of ministers; and it must be admitted that their appointment from the nominated members might be open to abuse. We think therefore that the exclusion of the nominated members from ministerial office must be accepted though Sir William Vincent would prefer to see the matter left open. He thinks that under the new proposals a minister, whether he is an elected or a nominated member, will be equally amenable to the legislative council; and it may not infrequently happen that a nominated member would be the best qualified person for appointment to the office.

42. *Working of the new Governments: three common elements.*—You will have gathered from what we have already said that we accept the proposed division of the functions of the provincial government into reserved and transferred subjects. We do not in the present despatch go into this question in further detail because we can only deal with it when we have considered the report of Lord Southborough's committee. We will merely assume, therefore, that such division has been made. We shall attempt later to present you with as faithful a picture as we can of the way in which we conceive that the new system will work. We shall examine how the Governor in Council will administer the reserved subjects and the Governor and ministers the transferred subjects: and also how the two portions of the government will work together. As we do so, we shall take up the various objections levelled against details of the scheme by its critics, and shall show what can be said in reply to them, or shall propose changes where they seem to us necessary. But in order to make our sketch intelligible, we must first deal with three of the functions or instruments of government which both halves of the executive must have in common. We refer to (1) the services which carry out the orders of the executive, (2) the provision of financial supply, and (3) the machinery for equipping the executive with whatever new legal powers it needs. To this extent we shall depart somewhat from the sequence adopted in the Report.

### THE PUBLIC SERVICE.

43. *General considerations.*—If we deal at some length with the question of the services we feel sure that no ungener-

ous construction will be placed upon the prominence which we give them. There is here no question of opposing vested interests to the cause of constitutional change. There is the very serious question of conserving for India, during a difficult period of transition, the only agency likely to be available for affording the necessary help and guidance. We owe it not to Parliament alone, but to the people of India and the services as well, to explain as particularly as we can the steps by which we intend that the great change in their position will be carried out. The description of the Indian Civil Service given in paragraph 126 of the Report is to a greater or lesser extent true of most of the public services. Most of them have assisted to shape policy as well as to execute it. The development of responsible government in India cannot but have the effect of relegating them gradually to the position of executants or advisers. There is no avoiding this fact and no wisdom in shrinking from its consequences. We put out of account for the moment the necessity for improving pay and pensions, which in our opinion is clearly established apart from any question of change in duties or status. But the new role of the permanent official will not make an Indian career so attractive to some Englishmen as it has been in the past, though others will be drawn to it by sympathy with the new ideal. We may hope that better acquaintance on the Indians' part with the difficulties of administration may be reckoned on to induce more sympathy with the attitude of the English official, and readier recognition of his best qualities in times of stress and emergency and of the need for his assistance. But we cannot leave the matter on an indefinite footing: and accepting as we do the cardinal necessity in the interests of India of conserving the services until such time as the country can replace them by some substitute approximately as good, we have carefully examined the question of their disposition under the new scheme of things.

44. *Need for legislation.*—The Report recognizes alike that it would be unfair to untrained ministers to require them to organize their own departments anew (paragraph 259) and that His Majesty's Government owe it to the services, whom they have appointed or whose appointment they have authorised, to see that they are properly supported and protected (paragraph 325). We heartily endorse both pro-

positions. In considering how they are to be translated into practice, we are led at once to certain preliminary considerations. Hitherto the regulation of the services has been to a great extent uncoded or codified only by executive orders. The duty of obedience by the subordinate officer and of protection by the superior officer was unwritten law; there was a homogeneity of interests and traditions between those who laid down public policy and those who executed it, which had the effect of leaving to a mutual understanding several matters that in other countries are more formally defined. The position will be altered now, with the public services coming in an increasing measure under ministers' control. It will be only fair both to ministers and to public servants that they should both be helped by a clear regulation of their formal relations to each other. Moreover there ought not to be one law for public servants working under ministers, and another for those who remain under the official part of the government. So far as may be, a public servant should find himself under a similar regime in whatever branch of the administration he may serve. So also the claims of ministers upon the service and their duties towards it should be closely comparable with those of the official members of the government. The whole machinery ought to be arranged so that the transfer of a department from one part of the government to the other should cause the least possible dislocation or change in the conditions of their service among the permanent officials employed in the department. We consider therefore that no time should be lost in reducing to statutory form the main rights and duties of the services in India, in so far as they are not already prescribed by law or rule. As the basis of the necessary law and rules we commend to your consideration the propositions which follow.

45. *The All-India services.*—It would prolong this despatch unduly if we were to set forth at full length the considerations upon which our proposals are based; but for our present purpose of depicting the new institutions in working it is necessary at least to outline the arrangements which we recommend for the future regulation of the services, premising these with the remark that we have not yet received the local Governments' opinions upon them. In the first place we propose that the services should be divided into three classes,—all-India, provincial and subordinate. The designation of



each of these will be a sufficient indication for present purposes of their composition : nor need we now pursue the subsidiary questions arising in connexion with such classification. Our idea is that the all-India services should be maintained as a model to the rest ; and with the object of impressing the seal of the existing system both on the Indian as well as the European elements in them, we consider that recruitment, whether in England or in India, should be according to the methods laid down by the Secretary of State, and that all persons recruited should be appointed by that authority. For similar reasons we advise that the Secretary of State should entirely control the pay of such services and sanction all new appointments to them that are not temporary. As regards allowances, we think that the Secretary of State should be invited to lay down certain guiding principles which the local Governments, subject only to the control of the audit officers, should be left to administer. We suggest that the regulations for leave and foreign service should be treated in a similar manner. Pensions are for the most part paid in England and are included in the Government of India budget ; but we bear in mind the possibility that the Indian legislature may acquire more control over the Indian budget, or that with a view to a more equable distribution of provincial burdens the pensions earned in a province may be made a provincial charge. A change in either respect would certainly affect confidence ; and there is therefore in our opinion a strong case for securing the pensions of the services beyond the possibility of alteration by any authority in India. We think that the age of superannuation and the scale and conditions of pension for all-India services should be fixed, if not in the schedules, at least by statutory orders of the Secretary of State made under the new Government of India Act.

46. *No option as to service under ministers.*—These appear to be all the matters connected with the all-India services for which it is possible to make provision by rule. In all cases where we have spoken of the local Government, the authority will be that of the Governor in Council in the case of reserved departments, and that of the Governor acting with ministers in the case of transferred services. There remain, however, to be considered the every-day matters of administration for which no rules can provide and for which some provision is yet needed. We recognise that service under the new

scheme cannot be equally congenial to all officers. We have considered whether officers in a transferred department should be given an option of being transferred with their department or leaving it ; but it seems to us inadvisable to make any general offer of a proportionate pension to men who are transferred, and of course still less to the men in the reserved departments. We quite recognise that in extreme cases, in so far as present incumbents are concerned, such steps may eventually be necessary : but to give any formal option of serving or declining to serve under ministers at the outset seems to us unwise. We prefer to abide by the ordinary rules that a public servant is required to fulfil any duty legally imposed upon him.

47. *Possible difficulties.*—We have, however, as practical men to face the possible difficulties that may arise and to consider how these can be mitigated, and if they pass beyond mitigation, how they can be settled. We are not dealing with imaginary problems ; the press and the platform have given us warnings of antagonism to the public services, and whether this definitely declares itself or not, the new situation will be a delicate one. Ministers will be taking over departments staffed by public servants, European and Indian alike, with no personal experience of popular government, who may tend to be impatient of new methods and unappreciative of changes in policy. Ministers may be apprehensive of obstruction and intolerant of the rigidity of official methods. We recognise that it is possible that, in the exercise of their responsibility and from the best of motives, ministers may adopt a policy which the service feels that it cannot consistently with its conscience and self-respect carry out. This is perhaps more likely to occur in the technical services where professional feelings may be aroused by methods which professional knowledge condemns. Ministers again may naturally prefer their own agents and be disposed to treat lightly vested claims to important or desirable appointments. Officers who personally render themselves unpopular will be treated with less consideration than they sometimes receive now. Disciplinary cases will present a difficulty, and a minister's handling of them will be more closely scrutinised than if the decision lay with an official government. In short, ministers and public servants will take time to shake down into each other's ways : it would be foolish to imagine otherwise.

48. *Their mitigation or settlement.*—No rules can afford immunity in all such matters, and we think that the task of making the new arrangements a success must fall on the Governor. We advise that this duty should be definitely and formally laid upon him by his instrument of instructions, and that a declaration to this effect should be made when the reforms are presented to Parliament, so that his role as protector of the public service shall be realized from the outset both by ministers and the services. We think that the permanent heads of departments and the secretaries should have access to the Governor, who will thus have every opportunity of watching the situation; and it will be for him, by influence and persuasion and finally by the tactful exercise of authority, to resist any proposals that aim at or tend towards the disintegration of the services. But in the last resort in case the Governor's intervention fails, it is necessary to provide a final safeguard. An officer finding his position unendurable should be entitled to apply to the Government of India for a proportionate pension. He would not prefer an appeal against the minister's orders on any matter of administration or any question of posting, promotion, or the like, but he would address the Government of India through the Governor in Council and would state his case and ask to be relieved from further service, and if the Government of India thought he had substantial grounds for complaint they would grant his request. An appeal would lie to the Secretary of State. But in the case of disciplinary orders passed by ministers which affect an officer's emoluments or pension, we see no option but to allow a direct appeal to the Government of India and to the Secretary of State. No officer of an all-India service should be dismissed without the orders of the Secretary of State. In the event of the minister's orders being reversed a difficult position would no doubt ensue, and in this case also the only ultimate solution might be to grant retirement on proportionate pension. We recognise the drawbacks of this procedure. Whatever care be taken to avoid the appearance of judging ministers it is unlikely that officers with a grievance will keep silence; and once the practice is established applications for retirement may become numerous. But we have to find a middle way which will give ministers reasonable liberty of action and give our public servants in the last resort

full protection; and no better means of doing so presents itself.

49. *Modifications in the Report.*—In two respects therefore we think that the proposals of the Report cannot be literally translated into practice. In paras. 240 and 325 the protection of the services is made the duty of the Governor in Council. This arrangement would, we fear, defeat the object in view. The work of the public services in all branches is so intimately connected with the administration that it cannot formally be made a reserved subject while, short of treating the services as reserved, to bring the official half of the Government into action for the purposes of protecting them would inevitably lead to friction between the two parts of government. Again in paragraphs 156 and 259 of the report expressions occur which will be read as promising detailed support and protection to a public servant in the discharge of his duties. In our judgment this involves too frequent opportunities of intervention to be a workable arrangement, or to be consistent with the due exercise of his responsibilities by a minister. We think that all that can be wisely guaranteed is in the last resort a right of retirement on fair terms, a generous right of appeal in clearly defined circumstances, and the steady exercise by a vigilant Governor of his suasion and authority in the direction of fair treatment, harmonious working and good feeling.

50. *All-India services: proposals summarised.*—We will now briefly summarise our intentions as regards the all-India services. The basic idea is that the structure of the public service, its duties and the general conditions of its employment should remain as far as possible untouched by political changes, at all events until the advent of the first statutory commission. When a minister is placed in charge of a transferred department he will take it over as a going concern with its staff intact. The question of the recruitment of Indians for the services is an entirely separate matter and will be regulated in accordance with the general policy prescribed by the Secretary of State. The actual recruits, whether European or Indian, and in whatsoever proportion, will come into a service regulated on uniform lines and as little concerned with political controversy as possible. As in the past, rules of conduct will be maintained for all public servants, however employed under the standing orders of the Secretary of State. The services will be required to show

the same diligence and fidelity to ministers as to the official part of the local Government. The general conditions of their service will continue to be ordered by the service regulations (or by any special contract of recruitment), no difference being made wherever they are employed. And they will be amenable to the minister's orders and discipline just as they will be in a reserved department to the orders and discipline of the Governor in Council. On the other hand, while ministers will be supported in requiring their staff to carry out their policy, their employees will be protected, as now, against arbitrary or unjust treatment. To this end they will be given reasonable access to the authority by which they were recruited, and they may not be dismissed, without at least the order of that authority—a rule universally accepted at present. But the power of intervention between them and the public servants under their control will be kept down to the minimum, and the right of appeal from ministers will be as little in evidence as possible. Appeals should lie only where emoluments or pensions are affected; but where they do lie they should lie up to the Secretary of State.

51. *Officers serving with both parts of Government.*—It will frequently occur that a public servant will have duties in both a reserved and a transferred department; the district officer may be the most prominent instance of the kind. It will make for simplicity and avoid improper conflict of jurisdiction if for purposes of posting, promotion and discipline such officers are kept entirely under the control of that part of the Government which is concerned with the budget head from which their pay is met. It may have to be arranged that ministers will contribute to the emoluments of officers partly employed under them in a ratio to be fixed by the Governor (and ultimately by rule), and similarly to their pensions on retirement. On the side of their work which concerns the transferred departments, such officers will be expected to take and carry out the directions of ministers exactly as if they were whole-time officers in those departments. But it is clear that they cannot be subjected to the discipline of two different authorities; and if either part of the Government is dissatisfied with the execution of its orders we see no other course than for it to represent the matter to the Governor. It will be one of the most important

duties of the Governor to deal with a delicate situation of this kind.

52. *Provincial services: organization*—The provincial service may be treated more briefly. We recognise that a time must come, and may come soon, when ministers will wish to take the provincial service of their departments entirely into their own hands, and to regulate their recruitment, pay, pension, and the like, but we think that they should not do so until they have put these matters on a legal basis by legislation. It seems to us that such legislation may reasonably be required to secure selection over the widest possible field on a basis of merits and qualifications, and to minimise the risks of nepotism; to ensure efficient training for the higher duties, to guarantee discipline and integrity; and to provide adequate pay, security of tenure and satisfactory conditions as regards pension, promotion and leave. But pending the passage of such legislation, we are of opinion that the determination of the conditions of the provincial service, even in transferred departments, must be left in the hands of the Governor in Council. The case in fact is one in which the principle of defining responsibility must give way to the superior principle of securing the interest of the public. The existing rules of recruitment should therefore be maintained unless altered by the Governor in Council. The aim should be steadily to eliminate the element of patronage and to establish a system of appointments by examination before or after selection, or, where appointments are made direct, to set up some exterior authority for the purpose of advising. Appointments in transferred departments should be made in accordance with the rules so established, by the Governor after consultation with ministers. In respect of pay we think that, as a check upon any tendency to overload the services at the top, the Government of India should retain some control over the emoluments of the highest posts in the service, and for this reason we suggest that our sanction should still be required to any new appointments on pay exceeding Rs. 1,000 or to the raising of the pay of any appointment above that limit. As regards service reorganizations we have already recommended to you that local Governments should be given freedom of action up to a pecuniary limit of five lakhs of rupees, a figure sufficiently high to provide for all reasonable reorganizations of the most costly provincial

services. The questions of allowances, foreign service and leave can, we think, be disposed of on the same lines as we have suggested for the India services. As regards pensions we think it necessary, before the reformed constitution takes effect, to set ministers an example by legislating ourselves in the Indian legislature to secure the pensionary rights of all the provincial services.

53. *Provincial services, administration.*—It seems to us that matters of administration and discipline can only be treated on the same general lines as for the India services. The minister must direct the administration of transferred subjects including such matters as postings and promotions. The Governor must be instructed to encourage him to promote the well-being and content of the service. Officers cannot be given any option as to transfer, but officers at present in the service finding their position intolerable should be able to ask for a proportionate pension. Such applications should go to the Governor and an appeal should lie from his decision to the Government of India. Only in disciplinary cases affecting emoluments or pensions should there be a regular appeal, and it should lie to the Government of India and from them to the Secretary of State.

54. *Subordinate services*—The third division would embrace the minor executive posts, a bulk of the ministerial establishments, the menial service and the like. In respect of these we feel our obligation to see that the rights and privileges of present incumbents are maintained and in particular that their pensions and provident funds are secured. It may be possible to attain this object by directions to the Governor in Council or by instructions to the Governor; but we propose to consider further the question of making provision for their pensions and provident funds in the legislation which as already explained we desire to undertake in the Indian Legislative Council.

55. *Public Service Commission.*—In most of the Dominions where responsible government has been established the need has been felt of protecting the public service from political influences by the establishment of some permanent office peculiarly charged with the regulation of service matters. We are not prepared at present to develop the case fully for the establishment in India of a public service

## THE INDIAN CONSTITUTION.

commission : but we feel that the prospect that the services may come more and more under ministerial control does afford strong grounds for instituting such a body. Accordingly we think that provision should be made for its institution in the new Bill. The Commission should be appointed by the Secretary of State, and its powers and duties regulated by statutory rules to be framed by the same authority ; we shall make detailed suggestions upon the matter in our despatch on the Bill.

### PROVINCIAL FINANCE.

56. *Vital importance of financial system.*—The second great function of government which will be common to both halves of the dual executive is finance. Apart from its importance as the fuel of the whole administrative machine, the finance of a country is a symptom and a gauge of the quality of its government. We have thus felt that no part of the scheme of reforms demands from us a closer or more anxious study than the financial arrangements with which the new system of administration will have to start. We are all the more impressed with the necessity for a wise decision by the fact that it is the financial side of their work for which the representatives of the people will find that their former political experience has done least to equip them. If there were no other reasons, it would in their interests be imperative that we should seek and establish a basis of thoroughly sound financial working. Simplicity and the directest possible relations between methods and results are of the essence of good finance ; and the elimination of every avoidable point of conflict or friction between the various financial authorities is demanded by the welfare of the taxpayer. If the arrangements are ambiguous, or if they provide opportunity for needless friction, the new régime will start under a handicap which will seriously prejudice its future development. We have received comparatively little intelligent criticism on this part of the scheme, which makes it all the more incumbent on us to be sure of our ground. We shall thus have to allot to an examination of the financial proposals in the Report a space in this despatch which may appear disproportionately large. It will be convenient to take the whole of these proposals together, even though



this involves some repetition of other passages in the despatch. The scheme will be found in paras. 200—211 of the Report, where a system of financial devolution is outlined, and in paras. 255—257 where the budget procedure of the future provincial government is briefly indicated. As we proceed, it will become apparent that the picture requires some filling in, and in that process we have found some parts of the original sketch which call for modification.

57. *Three leading principles.*—Given the dualistic structure of the provincial government, and the policy of preparing a field in which responsibility to the people can be steadily substituted for official control, we conceive that our financial dispositions must be based on three leading principles.

*First*, the present external control over provincial finance must be withdrawn in the largest possible measure.

The genesis and extent of this control have been described in paras. 104—113 of the Report. It has been shown that it originated in good and valid causes which are now passing away. The central Government had to rely largely upon the provinces for collecting the revenue it required. It had to supervise closely the expenditure of the provinces in order that the margin of provincial resources available for its own needs should not be unduly diminished. It was banker for the provincial funds, and could not, without embarrassment, allow them to be drawn upon too freely. Finally, it maintained as its ideal the duty of bringing to bear upon the outlay of the provinces that scrutiny which in other countries is usually applied through parliamentary institutions. The Secretary of State and the Government of India, in other words, endeavoured to be the financial conscience of the administration, and to see that proposals for provincial expenditure were thoroughly examined from the point of view of economy, of financial propriety, and of the interests of the taxpayer. It is clear that we must now gradually withdraw from this last position, and thereby afford room for the people's representatives to learn the duties which financial administration entails. Along with this, however, we must continue to obtain at least a part of our resources from and through the provincial governments; but we must alter the existing arrangements in the direction of much greater simplicity, and ask the provinces to make straightforward

payments for the services rendered to them by the central Government.

*Second*, within the province, each half of the government should have a defined power of raising the revenue to provide for the expenditure which it considers necessary.

It should know exactly what are its own resources, and should have the duty of developing them and the right to expand them. Here again simplicity is of the essence of the proposition ; confusion or counterclaims are unthinkable. "If the popular principle," says para. 109 of the Report, "is to have fair play at all in provincial governments, it is imperative that some means be found of securing to the provinces entirely separate revenue resources." We regard this statement as equally applicable, without challenge or qualification, to the position of ministers in financing their transferred subjects. To our minds it is imperative that they also, and for precisely the same reason, should be secured in the possession of separate revenue resources.

*Third*, during the period of training and advance in political experience, the people must be protected from unjustifiable financial burdens.

It will be seen that we adopt here principles which are closely analogous to those on which we base administrative delegation ; for, in truth, the two lines of advance are inseparable. In the following paragraphs an attempt will be made to set out the whole governmental mechanism of finance in the form which appears to us to be best adapted to the ends which these principles require it to serve.

#### RELAXATION OF EXTERNAL CONTROL.

58. *Resulting position*.—The axiom underlying this first part of the subject will be found in para. 189 of the Report, which announces the intention of "giving the provinces the largest measure of financial independence of the Government of India which is compatible with the due discharge by the latter of its own responsibilities." The Report aims at securing this measure of independence by various methods. The chief of these are (a) radical changes in the system by which provinces give up certain shares

in their revenues to the central authority, and (b) a relaxation of the orders under which proposals for provincial expenditure have to be submitted to the Secretary of State for his approval or otherwise. Under the first head it is proposed to abandon the arrangements by which a province is given just enough of its own revenues to cover its normal charges, while the central authority becomes, so to speak, the residuary legatee of whatever the provinces collect. In place of these arrangements or "settlements," the central services—the Army, Diplomacy and the like—will, in future, have adequate resources secured for them, partly from the yield of the central revenues—Customs, Salt, Railways, etc.—and partly by defined contributions from the provinces ; while the provincial governments will keep whatever they collect within their own provincial field, subject only to the payment of these contributions. Under the second head, the Report proposes largely to delegate the Secretary of State's financial powers (for the Government of India exercise very little separate or intermediate control) by altering the present financial codes and standing orders. These principles of action have met with general approval in India, and we are in full accord with them. We must, however, make it perfectly clear that, under these new arrangements, our own responsibility will be appreciably narrowed. We recognise that, helped by the audit, we shall still have a general responsibility for financial propriety and the avoidance of wasteful or extravagant expenditure. We also recognise that we are answerable for it that a province does not become insolvent or unpunctual in paying its debts. These duties rest upon us so long as we are responsible to Parliament for the good administration of India. We conceive, however, that, with the grant of this new financial liberty to the provinces, we shall no longer be required to watch their financial proceedings in detail, or to enforce from day to day measures which may seem to us necessary to correct financial error. Our intervention in future will take the form mainly of advise and caution ; though we cannot ignore the ultimate call that may be made upon us in extremities to issue definite orders which a province must obey if it wishes to retain its constitution.

59. *Provincial expenditure.*—The relaxation of the orders which require our scrutiny and your approval to proposals for

provincial expenditure is a wholly technical matter, which it would be difficult to cover in the compass of this despatch. It is also, so to say, a domestic matter, which, we presume, you will be able to effect by rules or orders under the Act. We have indeed already made suggestions regarding the broad lines of procedure. These we briefly enumerate below, not by way of anticipating your concurrence but merely in order to give completeness to our picture of the future.

- (a) *Expenditure on the public services.*—Our suggestion is that, with the omission of appointments made by you under direct agreements, the posts in the public services of India should be classified in the manner described in paragraph 45 above. In regard to the all-India division, we advise that you should retain virtually your existing power over the strength and the pay of the services comprised in it, while abrogating them in regard to the other divisions. In all subsidiary matters, such as temporary appointments, foreign service, allowances of all sorts, leave rules, age of retirement and the like, we propose that you should lay down broad fundamental regulations, and leave all details to be administered here in accord with those regulations and under scrutiny of the audit. As to pensions, we strongly recommend that the scales and general conditions should be incorporated in rules which you will frame under the new Act.
- (b) *Expenditure on the staff of public offices.*—Here our suggestion is that all minor restrictions on the powers of a provincial government should be removed, subject only to your approval being necessary in cases where the outlay exceeds a high and definite pecuniary limit or, in the alternative, where certain fundamental principles of administration are involved. This particular question is being examined in more detail.
- (c) *Expenditure on public works.*—Here also we shall have to suggest a high monetary limit up to which works may be undertaken by a provincial government without reference to you.

- (d) *Amenities of high officials.*—In regard to these we do not suggest any relaxation of your present control.
- (e) *Expenditure of an unusual nature, or devoted to objects outside the ordinary work of administration.*—In place of this criterion we propose that you should lay down canons of propriety and leave them to be enforced in India under the surveillance of the audit.
- (f) *Audit.*—The above proposals are contingent on the existence of a powerful and independent central audit, which will bring financial irregularity and misdemeanour prominently before the executive and the legislature. In order to define the scope and methods of audit, and its relations with the Government, it will be necessary for us to enter into much detail, which, we think, can most suitably take the form of an Indian Audit and Exchequer Act, and rules thereunder. A draft is now under preparation and will, we hope, be shortly submitted to you.

When decisions are reached upon the foregoing proposals, it will then be our duty to review the whole of our codes and bring them into accord with the principles accepted by you. It is our expectation that, apart from a digest of the financial powers which you will retain, the rules for the control of public expenditure within the provincial field will ultimately be exclusively contained in separate codifications for each province, built up and amended as required by the provincial authorities. One word of caution is necessary in regard to these proposals ; they have been framed by us with a view to reserved subjects, and it may be possible that some further relaxation of control may be required in regard to transferred subjects as a result of the report by Lord Southborough's committee.

60. *Provincial revenues.*—We return now to the first method which is recommended in the Report for increasing the responsibility of the provinces for their own finances :—the abrogation, to wit, of the complicated division of revenues which is now in force, and the establishment of a clear line of demarcation between central and provincial resources. While,

as we have said, we fully accept this principle, we are engaged on an analysis, at more leisure than was possible last year, of the figures used in the Report (para. 206) to exemplify the method of the future. We propose, by a careful study of our total expenditure, including that part of it which is incurred by you in England, to determine the true all-India deficit which in normal years the provinces will have to make good by contributions. At the outset, we should allocate these contributions on the basis taken in the Report, namely, an all-round ratio of the gross provincial surplus. They would then, subject to the re-adjustments *inter se* which we contemplate in the next paragraph, become a fixed charge upon the provincial revenues. One local government has put forward the claim that the provincial contributions, once fixed, should never be raised. We certainly do not anticipate any further levy from the provinces under normal conditions; but we must definitely reserve the right, in the event of war or similar grave emergency, to ask special help from provincial revenues. This would ordinarily be done on such terms as they may agree upon for the repayment of the temporary accommodation. As we foresee the position, however, the reverse process will be the more frequent. As the revenues of the central exchequer develop with the growth of industries and railway communications, it will probably be in our power to make a reduction in the provincial contributions. This will generally take the form of rateable remissions unless we wish to employ the grants for the purposes of the next paragraph. This must not of course be taken as limiting in any way our discretion to remit central taxation when we find our revenues becoming in permanent and substantial excess of our requirements.

61. *Committee on financial relations.*—We have explained above that we accept for the present a scale of contributions rateable to the gross surplus of the provinces, in the manner calculated, though not in exact conformity with the figures quoted, in paragraph 206 of the Report. No other device would leave each province with a surplus of its own, and consequently no other device is open to us. When we look at the result however, its equity is obviously liable to attack. From Madras we shall be levying nearly five times as much as from Bombay; and from the United Provinces nearly five times as much as from Bengal; while the Punjab and Burma

will also be contributing far more than wealthier provinces. Hostile comment has already been evoked; and we have had natural and vehement protest from Madras and the United Provinces, which are most detrimentally affected. It is no sufficient reply, although it is true, to say that these figures merely bring into prominence what has hitherto been disguised by the complicated financial arrangements of the past; and that they impose no fresh burdens. The mere disclosure of the true position makes it impossible to perpetuate the inequality, and we shall be told with unanswerable force that the first duty of a responsible government is to pay its own way. The difficulty of the position was foreseen in the Report and investigation by the first statutory commission was promised. In view, however, of the strength of feeling which has been aroused, we feel obliged to advise an earlier treatment of the question. We recommend that the initial contributions should be recognized as temporary and provisional, and that steps be taken as soon as possible to fix a standard and equitable scale of contributions. We have no wish to prejudge the issues, or to attempt to define what we mean by an equitable scale. It is quite conceivable that the disparity of the scale in the Report is to some extent redressed by the indirect payments which the lightly-burdened provinces make to the central exchequer through the customs receipts and otherwise. In any case the determination of the paying capacity of a province or of the criteria by which that capacity should be judged is far from easy. All that we can say with assurance at present is that we cannot justify the permanent retention of the criterion proposed in the Report, and that, after full enquiry, a standard scale should be fixed, towards which the provinces will be required to work by stages, as a condition of the new arrangements. To some extent the readjustment may be expedited by giving the more heavily burdened provinces the exclusive advantage of any remissions of the total provincial subsidy which the central authority finds itself able to grant from time to time. Or it may be necessary to prescribe a sliding scale, by which the provinces now favoured will raise their relative contributions at fixed intervals, presumably with the help of fresh taxation. The whole question however requires skilled investigation; and we propose that a Committee on Financial Relations be appointed, either

by you or by us, to advise fully upon the subject, so that each province may know exactly how it stands before the new regime starts. There are to our thinking the strongest possible reasons for the appointment of such a body to undertake this important duty and others of equal moment which will be discussed a few paragraphs later.

62. *Provincial taxation and borrowing*.—Among other steps which the Report advises towards greater provincial independence is the grant to provincial Governments of enlarged powers of taxing and borrowing on their own responsibility. We accept, in accordance with virtually all the opinions received, the proposal that you should schedule by rule the taxes for the imposition of which a province requires no special sanction. We suggest that in that category there may be placed succession duties, taxation of the unearned increment on land; taxes on advertisements, amusements and specified luxuries; and generally any supplement to revenues which are already provincial, such as land cesses, higher court-fees, increased charges for registration, and enhanced duties upon articles upon which the excise is not regulated with reference to the tariff schedule. We should not include, however, any form of increment to the revenues of the central Government, any addition to the list of excisable articles, or any duty (except as suggested above) on imports into the province. The schedule can be extended from time to time, and we have merely put forward the few suggestions which have so far occurred to us. If a province wishes to go outside the schedule, it must obtain our prior sanction to the proposed legislation, and we presume that section 79 (3) of the Government of India Act will be altered accordingly. We do not think it necessary, as suggested in the report (para 210) that we should see, before its introduction, a bill for the imposition of a tax which falls within the schedule. It is true that a local tax may encroach on the sphere of central taxation without technically infringing the schedule; but the existing law seems to provide sufficiently against such encroachment, and the veto could reasonably be employed in case of doubt. The limits which the Report proposes upon the future liberty of raising loans by a provincial Government have our entire concurrence. They have evoked some criticism, especially from local Governments who desire an unfettered power of borrowing for provincial pur-



poses, while other critics demur to our scrutinising the purposes for which a loan is required. The demand for entire liberty to borrow we cannot possibly accept. The narrow Indian loan market, strained as it will be by the coming demand for development in all directions, will have to be carefully nursed by us, and we cannot afford to be embarrassed by unrestricted competition either from or among the provinces. On the second contention, all that we need say is that, in years when the demand for loans exceeds the offers, we must undertake some rough measuring of the relative merits of the proposed expenditure before we make the final allotment. So far as is possible, we should endeavour to refrain from questioning the discretion of a province; and it will probably be helpful to lay down certain general rules. For example, priority would inevitably be given to a loan required for famine purposes, or to finance what is technically known as the Provincial Loan Account. It might also with propriety be laid down that a province is not to borrow except for capital purposes, *i.e.*, for obtaining a permanent asset of a material character. In the case of unproductive debt the establishment of sinking funds should also be prescribed. Some such rules would relieve us of much detailed scrutiny, while if they are infringed by a province which has been permitted to borrow in the open market, its action would be challenged in audit, and treated as a failure to discharge its responsibility for maintaining solvency.

63. *Provincial balances.*—In the past the central Government has retained a firm hold over the balances of a province. For one reason, it was the banker for the provinces and had to take precautions against inconvenient withdrawals, for another reason, it had to be vigilant against expenditure which might break down the settlement of the province and leave it a claimant for help from the central revenues. There is in consequence a standing order that the major provinces have each to maintain a certain minimum balance. There are rules controlling the operation by a province of its own balances. Furthermore a province may not budget for a deficit unless it satisfies us that the excess expenditure is non-recurring and abnormal. In all these matters change will be necessitated by the financial emancipation of the provinces. In the first place we think it is clear that each province ought to take over its Provincial Loan Account

from us. This Account, as you are aware, represents the fund from which a local Government advances agricultural loans, loans to indebted landholders, to municipalities and other local bodies, etc. The capital is provided by us as it is required, and returns to us as it is repaid. The province pays us interest on the average capital outstanding in each year, recouping itself by higher rates of interest which are supposed to compensate it for bad debts. Under the new régime, we consider that the provinces should provide their own finance for those transactions. It would be convenient if the committee on financial relations, which we have proposed in para. 61 above, would examine the state of the account in each province, and determine once for all the amount by which each local Government should remain in our debt. Although the present provincial balances run to unusually high figures, it is doubtful whether any local Government would be able to liquidate the capital now owing to us, without weakening its capacity to carry on the loan account. Several of the provinces, however, ought to be able to repay some part of their liabilities, and the balance could be funded in a loan for which we should receive interest, and possibly also sinking fund payments towards its ultimate extinction. We do not pursue the details further, as we trust to receive assistance in developing them from the committee to which we have referred. In the second place we should have to regulate the provincial balances of the future, to safeguard the famine assignment proposed in para. 204 of the Report. With the scheme there outlined we are in complete accord, and we suggest that a few simple rules should be made for the earmarking or investment of the cumulative assignments, as well as for the conditions under which expenditure against them should be permissible. In the third place we propose to abrogate the existing rules about minimum balances and sanction for a deficit budget, and to leave local Governments to their own responsibility in these matters. Lastly we should desire a regulation to the effect that a provincial Government must give us timely intimation of its intentions to make any draft upon its balances during each financial year. Apart from other obvious reasons for obtaining such information, it would provide us in case of war or similar crisis with the opportunity for inviting local Governments to co-operate (which in the last resort we must have power to require them to do)

in conserving the financial resources of India as a whole. We should thus replace our present control over provincial balances by a few simple regulations which will be recognised as reasonable and certainly not burdensome.

#### PROVISION OF SUPPLY.

64. *Allocation of resources.*—We have so far been considering the new financial powers and duties of the provincial Government as a whole. We now come to the distribution of those powers and duties among the two halves of the government and we thus approach one of the most difficult parts of the scheme, where the wisdom of the conclusions will be rigorously tested by the practical working of the future. The Report proposes that the revenue from reserved and transferred subjects alike be thrown into a common pool, from which the two halves of the government will draw the funds for their respective requirements. The amount which each may draw is to be settled yearly at the budget time, after consultation between the executive council and the ministers. The principle of division is that the reserved subjects of expenditure are first given the supply which they need, and the transferred subjects of expenditure receive what remains in the pool. If this is insufficient, ministers may go to the legislature for extra taxation but it is ministers alone who may initiate taxation measures. When the budget as thus framed comes before the legislature, it may alter it in any way. If, however, an alteration so made has the effect of reducing the provision of funds for a reserved subject, the Governor by certificate may cancel it. We appreciate the motive by which these proposals are inspired. We recognise that they are based on a desire that each half of the Government should, if possible, be brought into sympathy with the needs of the other half; that the supply for reserved subjects should be duly secured; and that ministers should be trained to accept the gravest of all responsibility *vis-à-vis* the people, the responsibility for taxing them. With the intentions underlying the proposal we have no quarrel, but we have grave doubts whether they can be fulfilled, and it is when we come to work out the practical details of daily business under a scheme of this description that our difficulties arise. The proposals have met with astonishingly little criticism in India. A considerable

volume of opinion resents what is described as the invidious burden of making ministers solely responsible for the unpopular business of taxation. We have also had protests against asking the transferred departments to live upon the crumbs that fall from the table of the richer reserved departments. Other critics, however, probably more acute, realise that the funds for reserved subjects can never, however great the necessity, be supplemented by taxation. They believe that it will never in practice be feasible to develop reserved subjects by drastic reductions in the funds which would otherwise be available for transferred subjects. They thus foresee a state of affairs in which any substantial increase in reserved expenditure, for example, the contingency of having to improve the pay of our police, will be at the mercy of ministers, although ministers will have no responsibility for the consequences of refusing the desired provision. We are not prepared to believe that the Report contemplated this method of paralysing executive action; and we do not consider that the scheme, as it stands, is assisted by support based upon this rendering of it.

65. *Our difficulties.*—The success of the arrangements recommended in the Report depends upon their being worked by reasonable men who will conduct themselves in a reasonable manner (para. 257). It would be unfair on our part to assume wholly different conditions and to lay stress upon the impossible situation which will be created if ministers refuse to co-operate, either by reducing their own claims or by imposing taxation, in order to meet expenditure which the official half of the government considers essential to the proper administration of reserved subjects. But we must point out that even reasonable men will at times, in all good faith, differ vitally from other reasonable men when it is a question of providing supply for work which the former are responsible for safeguarding and developing, while the latter are only concerned in getting a share of the money for other work. We can well imagine circumstances in which reasonableness may not prevail. Let us suppose a year of low revenue receipts and of high prices. It has become imperative to improve the pay of some important reserved departments, and the demand cannot be postponed. Ministers refuse to levy a tax for the purpose either because they disapprove of it or because they consider the time unfavourable; the

official halt of the government finds itself compelled to reserve the necessary funds ; the legislature refuses to allow any deflection of money from the transferred subjects ; the Governor has to interfere to restore provision which they have cut out ; the legislature protests and ultimately refuses supply for any purpose whatever, as they would apparently have a constitutional right to do. In such circumstances, and with a perfectly honest difference of opinion, we should inevitably reach a deadlock. There will no doubt be provision for dealing with such a crisis ; but it is eminently undesirable to afford opportunities for crises of this type. We are, therefore, not prepared to rely too implicitly on reasonableness when the circumstances must often be provocative.

66. *In the matter of balances.*—From this negative line of argument let us now turn to practical considerations which make us now advise definitely against the scheme of pooling revenues. Several of the difficulties which have forced us to this conclusion are strongly felt by certain local Governments. Without referring, however, to individual criticisms, we proceed to explain our own position. Our first difficulty relates to the provincial balances. In the Indian provinces, as you are aware, the unexpended income of a prosperous year is not used, as in our central exchequer or as in the United Kingdom, for the reduction or avoidance of debt ; it accumulates with us and is kept at the credit of the province, although we may temporarily use the money for our own purposes. So long as this credit remains—and at present it has reached a very high figure in most provinces—the provincial government can thus over-spend its budget provision without having to borrow. If then, under the new régime, ministers find in any year that the sums allotted to them in the budget are insufficient for the requirements of their transferred departments, are they to be at liberty to draw on the general balance standing at the credit of the province ? Presumably they would easily get the legislature to condone such a device, and it is difficult to see what authority is empowered to prevent it. Or it may be that the legislature, anxious to provide extra funds without taxation for a transferred subject, votes an amount which increases the deficit on the provincial budget as a whole and does so without provoking the Governor's intervention, *i.e.*, without

reducing any reserved provision. Is this to be allowed? If so, may it not be possible in time for the provincial balances to become exhausted by outlay in excess of the available current resources, and probably of a recurring nature, on transferred subjects for which the legislature decline to vote fresh taxation? Is there then to be any limit up to which each half of the government may draw on the common balances, not by agreement beforehand, but under stress of the necessities of the year and the inadequacy of the budget provision? The matter is not discussed in the Report, but clearly requires decision.

67. *In the matter of taxation.*—Our next difficulty concerns taxation. The intention of the Report is that fresh taxation cannot be raised for the necessities of a reserved subject except by ministers and with their consent. If they refuse taxation, the reserved subject must go without the funds it needs. There is thus a marked difference between taxation and legislation. If the Governor in Council needs legislation in order that peace and tranquillity may be secured, or in order properly to discharge his responsibility for the reserved subjects (para 252), he has a special machinery for obtaining it. But he has no corresponding power to obtain taxation, though it may be equally necessary for precisely the same purposes. It seems doubtful whether this position is tenable. Moreover it carries curious consequences. Let us suppose that the Governor in Council finds new and heavy expenditure imperative on some reserved subject but that he cannot induce ministers to consent to impose taxation for it. The Governor then, under his exceptional powers, insists on the expenditure being provided for in the next budget, and the result is to leave ministers with inadequate funds for their transferred subjects. What is to happen? Are ministers to be compelled to raise a tax for their own needs—needs which have been created against their will—because they have refused to raise it for the needs of their colleagues on the official side of the government? Such procedure would be tortuous, provocative and indefensible. Again, let us suppose that ministers have consented to raise the necessary money, but the legislature will not pass their taxation measures, are they to resign as having lost the confidence of the legislative council? They would presumably be most unwilling to put themselves in such a position. Take yet another case. Ministers have

raised a new tax for some purpose of their own. In the next budget the Governor finds himself compelled to add substantially to the reserved provision for some new necessity, and thus to curtail the provision for transferred subjects. Ministers virtually see their new taxation receipts going to finance some development for which they are not responsible, and of which indeed they may disapprove. What are they to do?

68. *In the matter of borrowing.*—Our third difficulty is associated with borrowing. If a province wishes to borrow, it may obtain a loan either from the Government of India or in the open market (para. 211). But whether the lender be the central Government or a private person, security will have to be given for the loan. That security presumably will not be the revenues of either half of the government, but of the province as a whole. Therefore, the loan must be guaranteed by the entire government of the province, and not only by one part thereof. Here the trouble begins. Suppose ministers wish to raise a loan for the development of a transferred subject, can a majority of the executive council veto the proposal if it is one of which they disapprove? If they have no power to do so, how can they be made financially responsible for such a loan? If, on the other hand, the executive council wish to borrow for a reserved subject (*e.g.*, forest communications) and ministers disapprove, what are ministers to do? It must be remembered that in certain contingencies the service of the loan (*i.e.*, the yearly interest and sinking fund charges) will fall on ministers; for such charges must obviously have a first claim on the provincial revenues in each year and may thus diminish the residue of those revenues which the Governor allows the legislature to appropriate for transferred subjects.

69. *Report scheme abandoned.*—We now proceed to sum up the difficulties which we have felt it necessary to enlarge upon above. We find that definite provisions are necessary to determine the following matters—

- (a) How, to what extent, and by whom, the balance at the credit of a province may be drawn upon,
- (b) How money can be obtained either by taxation or by borrowing for the needs of a reserved subject;

## THE INDIAN CONSTITUTION.

- (c) How the liability for the interest and sinking fund charges of a loan can be laid upon the authority for whose purposes the loan was raised ; and
- (d) How the proceeds of taxation are to be secured for purposes which rendered the taxation necessary.

In trying to frame regulations for those matters we have found that no possible settlement of them is compatible with the scheme for the allocation of supply which is set out in the Report. The sole object of over-drafts on a provincial balance, of provincial taxation, or of provincial borrowing is to add to the resources which are available for expenditure ; and no regulation of those matters can be effective unless the resources of each half of the government are clearly demarcated. That is in brief our first substantive objection to the scheme of pooling. Our second is that the scheme is wrong in theory. It is wholly wrong that the official government should have the power to refuse funds for the work of the popular half of the government. It is equally wrong that the popular half of the government should have the power to refuse fresh taxation without which the official half cannot carry on. Each section of the government intrudes upon the work of the other in a manner which is wholly indefensible. Our third objection is the friction which the annual allocation of funds will generate. If there were no alternative, friction would have to be accepted, although even then we could not conceal from ourselves the gravity of its consequences. If there is any reasonable alternative, we certainly consider that friction should be avoided in the interests both of political progress and of the well-being of the people. Our fourth objection is that the scheme in the Report offers no incentive to either half of the government to develop its own resources. Importance is attached (para. 256) to the "educative efficacy of the annual budget discussion." In our opinion there is another educative influence which the scheme omits to utilise, namely, the training in administration which is provided when the administrator receives, for his spending departments, the benefit of any improvements which he can effect in his revenue departments. It is here that the true inducement lies for him to take an interest in, to expand and to develop his sources of revenue. Under the pooling system any improvement which either half of the government can effect goes into hotchpot, and they get no direct advantage from it,



possibly no advantage at all. Any mismanagement of which either the executive council or the ministers are guilty does not recoil upon them ; they still strive to get all the money they can out of the common revenues. Neglect brings no punishment, energy no reward. To our thinking this objection in itself goes far to turn the scale against the scheme of pooling.

70. *Our proposals. — Separate purse.*—It is now incumbent on us to describe the alternative proposals which we recommend. The first step is an actual division between the resources available for the purposes of the Governor in Council and those available for the purposes of ministers, two separate pools instead of one pool. In order to arrive at this, several stages are necessary. The first stage is a thorough examination of the provincial balances. In the balance at the credit of each province there will be found a number of items earmarked for special purposes ; and the natural course would be to place these formally at the disposal of that half of the government which controls the spending department concerned. It may also be necessary, in provinces liable to famine, to earmark a substantial sum as the nucleus of the fund to which the annual famine assignment will belong. This question can only be decided for each province with regard to the amount of its assignment and the period which has elapsed since the last scarcity. There may be other adjustments into which we need not enter now. After all adjustments are made, however, there will remain a free balance, which we propose should be divided between the two halves of the government, so that each will know exactly what margin it has for unforeseen or non-recurring expenditure. This division will naturally be followed by rules prescribing the manner in which the balances may be drawn upon, and the degree of treasury control over the purposes of such drafts. The second stage is the definite allocation to each half of the government of the receipts from the reserved and the transferred subjects respectively. Ministers will have, without interference or reservation, the full revenue from their own earning departments, and will be able to count upon it in preparing their schemes of expenditure. The Governor in Council will be exactly in the same position ; but it should be noted that from his resources will have to be deducted—unless the deduction can be taken before the

allocation is made—all charges which are given a statutory priority on the provincial revenues. These would include the contribution of the province to the central exchequer; the charges for existing loans; and possibly certain salaries on the analogy of the Consolidated Fund in the United Kingdom. The third stage will be to determine the division of the surplus. It will be remembered that under the scheme of contributions every province is left with a surplus, large or small. We propose that each half of the government be told what share of this surplus will be at its disposal. We realise that the "transferred services are generally those which stand in greater need of development" (para. 255); and we should desire the lion's share of the surplus to be placed at the disposal of ministers. The fourth stage will be to estimate the normal expenditure for reserved and transferred subjects respectively, and then to add to these figures the share of the surplus which we have decided to allot to each. We should thus arrive at the amount of normal revenue which each half of the government requires for the proper conduct of its administration. Let us then take the case of ministers. If the revenue which we have decided that they require is not in normal circumstances to be obtained from their earning departments, the difference should be made good to them by an assignment from the revenue of the reserved departments. If, on the other hand, the receipts of the official half of the government will not normally equal the revenue which we have determined that they require, an assignment would be made to them from the transferred departments. Ordinarily speaking, we should like to see the assignment in either direction take the form of a definite fraction of some head of growing revenue. Failing that, we should not object to a lump subsidy, rising, if the proposals in the next paragraph are accepted, in a sliding scale for the period for which the assignment or adjustment is calculated. We have now described what we may for shortness call the "separate purse" system. The advantages of a separate purse were accepted by all but one of the Heads of Provinces who met us last January, provided that the system can be made workable. We have endeavoured to show that it is both workable and simple; and we have actually worked it out tentatively for two exemplar provinces though we do not burden this despatch with the calculations. It seems to us to be free

from all the main objections which we found in the pooling system. It allows each half of the government to forecast its expenditure with a sure knowledge of the revenue which will be available to cover it. It informs them what part of the provincial balance they may draw upon. It is compatible, as will be shown below, with their enjoying the proceeds of their own taxation, obtaining their own loans and accepting full liability for repayment of the money they borrow. It gives each half of the government a direct interest in improving the sources of revenue which are placed in its charge. Finally, it narrows down, to the mere question of a single adjusting figure, the field of financial conflict between the two halves of the government, and thus largely reduces the opportunity for friction inherent in the scheme of the Report. We may add, as will appear, from para. 73 below, that it does not remove reserved expenditure from the purview of the legislature.

71. *Periodic adjustments.*—Friction can, in the opinion of most of us, be still further diminished by taking another step in the process of allocating resources. This step would be the fixation for a period of years of the adjustment between the two halves of the government. It would for example, be determined for three or five years whether ministers should receive 15 per cent. of the land revenue to balance their requirements, or whether the reserved departments would have to be placed in a position of equilibrium by receiving, say, 10 per cent. of the excise revenue collected by ministers; or the decision might take the form, as we have suggested above, of a lump subsidy from one side to the other, fixed so as to increase automatically in each year. By a settlement of this sort we should get rid of the yearly wrangle that would attend the annual adjustment. Some apprehension has been expressed that a periodical adjustment of accounts will only mean accumulated bitterness and would be worse than a series of annual disputes. We do not share that apprehension. We think that the permanent open sore would be worse than the periodical operation. In actual practice the yearly dispute at budget time would range over future requirements not yet tabulated, and would accordingly be vague and unsatisfactory and largely academic. If on the other hand the settlement be made at intervals of several years, the merits of the case could be threshed out on the recorded

expenditure of the intervening period, and with reference to the policy actually initiated and estimated for. We favour therefore a periodical as opposed to an annual settlement. There is in the Report a passage (para. 256) which seems to condemn this proposal on the ground that it is an attempt to foresee the contingencies which may occur and to budget in advance for a long period. What we now propose, however, is in no sense a budgetary arrangement. In separating the resources of ministers from those of the executive council, we should not be attempting in any way to forecast the budget provision by either authority for one year or for any number of years. The analogy of a municipality or a rural council is not inappropriate. In such cases we invariably begin by defining what sources of revenue the local body may count upon—license fees, school fees, ferry receipts, district cesses, and so on. The local body is informed that these are its available funds, probably to be supplemented by grants-in-aid; and it has clear warning that, if necessity arises for spending more money than these resources yield, it must have recourse to taxation. In doing all this we should certainly not be framing a budget for the local body in question; at the most we should be indicating the limits within which its budget will have to be drawn. It is precisely the same with the method of settlement which we propose as between reserved and transferred departments. The arrangement would merely tell the authority responsible for each what are to be its available resources; what opening balance will be at its credit: and consequently what range of expenditure it may provide for, and at what point it must face extra taxation. If, therefore, the difficulties which have been expressed regarding our proposals are no longer insisted upon, we suggest that the adjustment of the separate purse be made at intervals of several years under simple, definite regulations. It could be made either by an outside impartial body, or by a tribunal which the Governor would appoint *ad hoc*, and on which the legislative council would no doubt be represented. The latter seems preferable, for the Governor could always obtain an expert adviser or an umpire from the Government of India. The matter is one which we can develop later if the principle is accepted by you; and the working of the system could suitably be reviewed by the periodic statutory commissions. Meanwhile we strongly advise that, at the

beginning of the new arrangements, provision should be made for :—

- (a) dividing the balance now at the credit of each provincial government between its two halves, and incidentally deciding upon the famine insurance arrangements and the treatment of earmarked items; and
- (b) making the first settlement on the separate purse system for a preliminary period, in order that the new provincial government may not be burdened at the outset with unnecessary financial controversies.

We suggest that this duty be imposed upon the committee on financial relations which we have recommended above, and that it be undertaken as soon as the list of transferred subjects is settled for each province. We are clear that this initial task must be done for the provinces by outside agency, for the simple reason that the new machinery must be placed in a clear and intelligible financial position before it begins work.

72. *Arrangements for taxation and borrowing.*—We are anxious that, just as the sources of ordinary revenue are defined, so also there should be a clear allocation of responsibility and results in the matter of taxation and borrowing. We propose that either half of the government should be free to raise a new tax for its own purposes (though this need not debar both halves of the government from combining, if they can agree to do so, in joint tax for their common purposes and dividing the proceeds). The new tax would be assessed and collected by the authority to whose department it belongs; for example, a cess on land would be collected in the land revenue department; but the proceeds would be credited to the authority which imposed the tax. Some difficulty has been felt about this dividing of the power of taxation. The proposal in the Report that ministers alone may tax is met by most critics with the objection that taxation must be an act of the whole government. There is truth in this; and at any rate it goes without saying that in a matter of such importance as new taxation the Governor would insist on a full measure of prior consideration by his whole government, and would satisfy himself both as to the

necessity for the measure and as to its suitability. We do not, however, wish it to be possible that one half of the government should be able to veto taxation by the other half. The question will be, like many others, one which will be debated, from all points of view, at a joint meeting of the executive council and ministers, so that every aspect of the proposal may be fully considered. Having heard all that has to be said, the Governor will then decide whether to concur in the proposal if it emanates from the official side of the government, or to exercise his power of veto under section 50 (2) of the Act. Similarly, if the proposal originates with ministers, he will have to decide whether to accept or overrule it. If opinion is divided, the consent of the Governor to the imposition of the tax will be the deciding factor. In regard to loans, the procedure to our minds should be closely analogous. We are convinced that here also both halves of the government should have equal liberty. It is correspondingly evident that the authority which borrows should undertake the sole liability for the payment of interest and the repayment of the loan by a sinking fund or otherwise. Inasmuch, however, as it would be against the interests of the tax-payer to borrow on anything but the best available security, we should lay down as essential that all provincial loans must be secured upon the whole provincial revenues, and not only on the resources of that part of the government which has raised the loan. This necessitates just as clearly as in the case of taxation, a full consideration of the subject by the whole government. The procedure will be exactly similar, but the final assent of the Governor to the raising of the loan will imply that the whole revenues of his province are being pledged as security for it. When the loan is obtained, it will go into the balances of the authority which asked for it.

73. *Provincial budget.*—The way has now been cleared for a description of the provincial budget of the future. This should not take long. Each half of the government, as soon as it has estimated the receipts from its own heads of revenue, will know exactly what expenditure it can afford. With the help of the finance department, to which we shall refer below, the expenditure estimates will then be framed accordingly. If either part of the government has to dip into the provincial balances, it will be under no misconception of the amount of

balance available, and will know under what conditions it may draw thereon. If it finds that the current expenditure is likely to be far in excess of the year's revenue, it may decide to ask for fresh taxation. The Governor will then convene his whole government, and after full consultation, decide whether taxation is to be proposed to the council, and in what form. Similarly, if either side of the government proposes to borrow during the year, joint consultation will enable the Governor to decide on the proposal. All these points being settled, the executive council can complete its own estimates and ministers can complete theirs. The finance department will combine the two sets into one budget, which will be formally presented to the legislature by the member of government in charge of finance. On the presentation of the budget, the members of the executive council will first explain their respective estimates, and the legislature will discuss any resolutions that may be moved in regard to them. Ministers will follow and similarly explain their figures, and meet resolutions upon them. If either part of the government asks for new taxation which involves legislation, or desires to raise a loan, it will introduce a bill for the purpose. If the bill comes from the official side of the government and the legislature proves hostile, the Governor can exercise his right of removing it by certificate to the grand committee. If on the other hand the bill has been promoted by ministers, it will stand or fall by the decision of the legislative council. There would be a similar distinction in the matter of resolutions. If a resolution is carried on a provision for the reserved departments, it will not be binding upon the government. If it is carried against ministers on a provision for a transferred subject, it will also be not binding ; but ministers will have to consider whether the resolution in these circumstances is tantamount to a vote of no confidence upon which they ought to resign, or whether they can afford to ignore it and remain in office. Certain general rules, however, will govern all resolutions. One obvious regulation will be, in pursuance of House of Commons practice, that no resolution for any grant or charge on the public revenue may be moved except by a member of the government. Another will have the effect of permitting a resolution to propose an addition to one budget grant in exchange for an equivalent reduction in another. This however will be subject to the stipulation that

both the grants in question must be either wholly reserved or wholly transferred; that is to say, no resolution may be moved to cut down the provision for a reserved subject in order to increase the supply for transferred subjects. We believe that this procedure will enable the budget under the new régime to be prepared and discussed in an orderly and logical fashion, and will eliminate all avoidable points of friction or misunderstanding. It will have been incidentally observed that we wish to modify the procedure indicated, we fancy, by inadvertence, in the last sentence of para. 256 of the Report.

## TREASURY CONTROL.

74. *Joint treasury*.—The withdrawal of external control over provincial finance implies the substitution of effective control within the province. That control in practice must be divided between the finance department (or treasury) of the province and the legislative council. We deal first with the finance department and its functions. The responsibility of this office will in the future be much greater than it is to-day. With two final authorities for the preparation of projects and for the sanction of expenditure in the same budget, provincial finance must become more complex and more delicate. Preliminary, but most important, point for decision is whether each half of the government is to have a finance department of its own. We have given the matter our most careful thought, and are convinced that the department in each province must be one and undivided. As between reserved and transferred subjects there can only be but slight differences of procedure; and the standards of propriety in collecting and spending public money—the ideals in short, of financial probity—must be identical in every branch of the administration. Convenience also and economy both suggest that the whole financial control should be under one roof, especially as at the outset the work on transferred subjects will be a small part of the whole. The department should be a reserved one; but we consider that, at least in large provinces there should be, in addition to the regular financial secretary, a second or joint secretary whose business it will be to deal with all financial cases coming from departments under the control of ministers.



The selection of the officer to fill this appointment would be made by the Governor in deference, wherever possible, to any choice expressed by ministers. He would be their financial adviser in all transferred subjects; he would be wholly at their disposal to help them on the financial side of their work; he would prepare their proposals of expenditure and the like for presentation to the finance department, and would see that their cases were properly represented there. We hardly think that our proposals can be misinterpreted into any suggestion that a unified finance department is meant to detract from the authority of ministers in managing their own portfolios. The Bengal and Bombay Governments, however, have shown some nervousness on the point; and, in order that there may be no misunderstanding, we may explain briefly what we understand to be the functions of the finance department or treasury. It is in no sense an over-riding power. It is not a body that either dictates or vetoes policy. It watches and advises on the financial provisions which are needed to give effect to policy. It criticizes proposals and can ask for further consideration. It points out defects in methods of assessment and collection, it can demand justification for new expenditure from the department which proposes it; it can challenge the necessity for spending so much money to secure a given object. But in the last resort administrative considerations must prevail. If there is a dispute regarding expenditure on a reserved subject, the finance member may urge that it is wrong or wasteful or that it will entail fresh taxation. But he can be overruled by the Governor in Council. If the dispute relates to expenditure on a transferred subject, the finance department may similarly expostulate. But the minister in charge of the particular subject can overrule it and its objections, taking the full responsibility for so doing. In England, he would, in theory, have to get the Cabinet to endorse his view in such a case; in an Indian province he would need only the concurrence of the Governor. As practice crystallizes and grows familiar, we are confident that ministers will find friendly and valuable help from the finance department in developing their schemes of expenditure on sound and economical lines.

75. *Its working.*—We trust we have made it clear that the relations of the provincial finance department with both

parts of the government will be precisely the same. We would emphasize the necessity for strengthening its position as external control is withdrawn. Its duties, as we conceive them, may briefly be described as below.—

- (i) In its association with the revenue departments, the finance department will exercise steady pressure in the direction of efficient assessment and collection of every kind of public due.
- (ii) It will examine all schemes of new expenditure for which there is a proposal that budget provision should be made ; and an invariable rule should be established that no new entry may be made in the budget until it has been scrutinised in the finance department, which should certify that it has been examined by it. At this stage the duty of the department is to discuss the necessity for the expenditure and the general propriety of the proposal. It has also to advise as to the provision of the requisite funds, whether they can be met from the existing resources of the province, or whether they will involve new taxes ; or in the alternative whether they constitute a proper purpose for borrowing.
- (iii) The next duty of the department may conveniently be described in the words of rule 13 of the rules in force for our own executive council, namely :—  
 “No proposal involving an abandonment of revenue for which credit has been taken in the budget, or involving expenditure which has not been provided for in the budget, or which, though provided for, has not been specifically sanctioned, shall be brought forward for the consideration of the government nor shall any orders giving effect to such proposals issue, without a previous reference to the finance department.”

Insertion of a project in the budget means that the legislature gives the proper executive authority power to sanction the expenditure ; it is not an order to disburse the money. That order must be given separately by the duly empowered authority ; and in the case of any new or important expendi-

## FIRST REFORMS DESPATCH.

ture, it should not be given without prior consultation with the finance department.

- (iv) The finance department should be employed as a safeguard against the influences which make for the lavish growth of public appointments. We should like to see it prescribed in the new Act that no public office is to be created or its emoluments determined without prior consultation with the finance department. This will insure publicity and need not debar the delegation of minor powers of appointment.
- (v) The finance department must be in a position to check expenditure for which there is no budget provision, or which is in excess of the budget provision, whether it is covered by the appropriation of savings from another budget grant or not. The matter is one which can be examined more satisfactorily in connection with the Audit and Exchequer Bill which we hope to draft for your approval. Stated very generally, our intention is that the purposes of the budget may not be seriously departed from without the knowledge of the finance department, which will of course be responsible for interpreting its provisions in a reasonable spirit.
- (vi) Finally the finance department must be in intimate relations with the audit. It will have to advise the auditor regarding the scope and intentions of schemes of expenditure, having itself been apprised of these in its discussions with the executive authority and the preliminary stages. It will be consulted by the auditor about the detailed application of financial principles and the interpretation of financial rules. It will keep him informed about prices, local rates of labour, and many other facts which are relevant to his audit, but of which he has no direct source of knowledge.

## CONTROL BY LEGISLATURE.

76. *Public Accounts Committee.*—The second guardian of financial propriety in a province will be its legislature. The

power of this body in matters financial will grow with time and experience. We recommend that at the outset its work should be scrutiny and recommendation rather than a definite authority to sanction or disallow expenditure. The latter will come when further political progress arms the legislature with the power of voting supply and passing Appropriation Acts; at present it would be premature. We suggest that it should be the constitutional duty of the legislative council in each province to appoint a committee on public accounts, and to receive reports from it, dealing with them, in so far as may be necessary, by resolutions which will not be mandatory. Before this committee we propose that all reports from the finance department on excesses or reappropriations exceeding a limit which will be prescribed by rule should be laid, as well as all audit reports with the orders of the executive authority thereon. It will be for the committee to advise upon all surcharges and disallowances of the auditor, and upon the action which the executive authority has taken upon them. It will also advise regarding serious departures from the budget provisions. In all matters referred to it the committee will be assisted by the finance department of the province; and that department should have the right of being represented when its own or the audit reports are being considered. The advice of the committee will, as we have already suggested, take the form of a report to the full legislature.

#### THE AUDIT.

77. *Audit system*—Standing behind all financial control there must be an effective audit. At present our audit, though it has been greatly improved of late, has its shortcomings. It is obsessed by codes and formalism, and has too little practice in challenging the wisdom or propriety of expenditure which has been incurred under the colour of orders from competent authority. These defects arise largely from its association with an exceedingly elaborate system of accounts and technical safeguards against misfeasance. They can be remedied, for it is the opportunity rather than the spirit that has been lacking. So far as the structure of the audit machinery is concerned, our first measure will be to relieve the audit officers from the currency and resource work that

now falls upon them. This change will take time and careful working out. We are satisfied that audit and accounts must hang together and must in present conditions remain under central authority. The provincial administrations must continue to receive compilations of their accounts and all other similar information which they require from the audit officers ; but the latter, in all questions of control, discipline and method, will be entirely independent of the local governments. To secure this independence we advise that the Auditor General be given a statutory position by the new Act ; and similar statutory protection should be afforded to his audit staff in the provinces, either by regulations under the Act or separately by the Audit and Exchequer Bill which we contemplate. There will follow a vast amount of detailed work in clearing the tangled mass of financial codes and regulations. The existing orders will have to be simplified and harmonised, and referred directly to defined principles. All this work we propose to undertake as soon as we are free from the more urgent pre-occupations of the reforms scheme. The underlying notion will be two-fold, first, we wish to give audit officers leisure from laborious routine to accept the far greater responsibility which will now be laid upon them, inasmuch as it will impose more of a strain upon their discretion and judgment and less upon mere mechanical industry. It will also be most advisable that the superior audit officers should move about and see for themselves the working of the establishments whose accounts they inspect. Second, we desire to foster a greater initiative in audit. In place of the formal examination of authorities and of rules, the work should be conducted with greater regard to the broad principles of legitimate public finance. The audit will not only see whether there is quoted authority for expenditure, but will also investigate the necessity for it. It will ask whether individual items were in furtherance of the scheme for which the budget provided ; whether the same result could have been obtained otherwise with greater economy ; whether the rate and scale of expenditure were justified in the circumstances ; in fact, they will ask every question that might be expected from an intelligent tax-payer bent on getting the best value for his money. The audit officers will also devote more of their time to looking into the manner in which the various executive officers are under-

taking their more important financial responsibilities. In saying all this, we are conscious that our observations are very general, suggesting intentions rather than formulating specific recommendations. We are anxious however to show how we propose that the existing audit arrangements should be fitted for the more important functions which will soon be expected of them.

78. *Audit reports.*—With the audit rehabilitated as we should wish, the procedure for making its criticism effective will be as follows. Each audit report which deals with provincial subjects will be submitted to the Governor, for communication to the executive authority concerned, whether member of executive council or minister. Copies will go simultaneously to the finance department of the province, which will take orders upon the report. In the case of reserved subjects, the Governor in Council will dispose of the report and will have power to condone surcharges and disallowances, except where they relate to definite infringement of orders from the Secretary of State or the Government of India. In the case of transferred subjects, ministers will have an exactly corresponding position. But in each case, the finance department will place the report and the orders upon it before the committee on public accounts. Where orders from the Government of India or the Secretary of State have been infringed, it will refer the matter to those authorities through the Auditor General. Otherwise the committee on public accounts will have the right to examine all audit objections and executive orders passed upon them, and to make recommendations to the legislature. It will then be for the legislative council to decide whether to move resolutions in regard to any matter which in their judgment requires more discussion or publicity. Incidentally, the same procedure will be open to them in regard to excesses over budget grants or re-appropriations which have been reported by the finance department. Resolutions on these matters will stand on exactly the same footing as resolutions on the budget; *vide* para. 73 above. In this sketch of procedure there is nothing that derogates from the right of a provincial audit officer to bring financial irregularities to the notice of his local government or of the Auditor General to bring to the notice of the Secretary of State any matter in which he considers that the action of a local government has been perverse or contrary to public interests.

## LEGISLATIVE ARRANGEMENTS.

79. *Grand committee plan approved.*—We pass on to consider the arrangements for legislation. We have just received but have not considered the proposals of Lord Southborough's committee as regards franchises and the composition of the legislative councils, and on these heads, therefore, all that we need say is that we accept the proposals that the provincial councils should be constructed with substantial elective majorities. The question remains how the executive government should be enabled to procure the legislation which it deems necessary. So far as transferred subjects are concerned no difficulty arises. The principle that ministers shall be amenable to the legislature means that they will depend upon the will of the majority in that body for the laws which they want; but we agree that the Governor in Council must be provided with some means of securing the legislation which he thinks essential for the reserved subjects. We agree further that the idea of relying in such cases on legislation by the Government of India is impracticable for the reasons given in para. 248 of the Report. Most of the local Governments accept in principle the proposals for proceeding by grand committee. The Madras Government are alone in proposing that if a government bill is rejected or modified in vital particulars, the government should resubmit the bill in such form as they think necessary with the intimation that they consider its passage without modification essential, and that after the bill had been reconsidered by the council it should be open to the Governor setting aside any amendments to declare it to have passed into law. We recognise that this plan for passing what may be described as permanent ordinances, which is, we believe, akin to the arrangements of the Egyptian organic law, presents the advantages of simplicity and candour. It avoids any pretence of recourse to majority support. But it does not seem to us a practical proposal. Any attempt to legislate in opposition to the wishes of the legislative council must necessarily involve difficulty; but the best hope of minimising the difficulty is in employing the means which are as nearly as possible those to which people are already used. The grand committee plan approaches most nearly to that requirement, and therefore in spite of its additional complexity we prefer it,

not merely to the Madras proposal, but also to the alternative proposals put forward by the Government of Bombay and by Sir Reginald Craddock that government legislation should be effectively passed by something short of a positive majority.

80. *Modification proposed of composition.*—There is, however, a strong feeling amongst local Governments that the procedure has been made too difficult, and that the majority offered to government is not merely the smallest possible but also depends uncertainly upon the doubtful solidarity of a number of non-official members. In practice the nominated members for the grand committee would be chosen probably from the nominated or from the European elected members. In theory the nominated members sit for representative purposes, and since the grand committee is in each case to be constituted with reference to the subject matter of the bill, the government ought to select members for it, not because it feels sure of their support, but because they are interested in the measure. We fear, however, that the executive would be drawn into violating this principle in order to obtain safe supporters. Five out of the local Governments consulted think that even so the margin of security is too fine. We feel the force of this criticism. We agree with the Government of Bengal that there is no danger that the Governor will use the grand committee lightly or heedlessly. Not merely will he be guided in this respect by his instructions (para 252) but he will also be checked by the prospect of difficulty with his ministers and with the legislature. If therefore the situation is such that he deliberately decides to encounter these obstacles we consider that he ought to be secured from prospects of failure. The proposed composition of the grand committee does not, in our opinion, place the government in as favourable a situation as it occupies in the existing councils; and therefore we recommend that in each province the grand committee shall be so constituted as to reproduce the existing proportions of elected, nominated and official members in the provincial councils. We are in communication with local Governments and shall present our detailed proposals to you in our second despatch.

81. *Certificate in reserved subjects.*—Our next recommendation concerns the proposed certificate power. It has been pointed out that the formula proposed in para. 252 of the



Report comprises two sets of circumstances which are not identical or of equal importance. As matters stand the Report proposes that on reserved subjects the Governor should certify a bill in two different sets of circumstances, (1) if the legislation is necessary to secure peace and tranquillity and (2) if it is necessary for the discharge of the Governor's responsibility for reserved subjects, even if no question of peace and tranquillity arises. It seems to us that the latter condition absorbs the former. Clearly it is of the utmost importance to determine in what circumstances the Governor may use his powers of certificate. In so far as he is precluded from using them, then in respect of reserved subjects the government, itself irremovable by and free of any responsibility to the legislature, would be unable to secure from the legislature the bills which it wanted. This would bring about precisely the situation to which Congress-League proposals tended. That situation was criticised in paras. 166-167 of the Report and we accept the arguments adduced therein as conclusive. It follows that unless this part of the proposals is to be left open to the objection taken to the Congress-League scheme, and again in para. 22 above to the proposals of the majority minute by Heads of provinces, the Governor's power of certificate must be freed from embarrassing restrictions. He must, as para. 252 appears to contemplate, be free to certify any bill that is introduced on a reserved subject, if he thinks such a step necessary, and we advise that the new bill should be framed accordingly.

82. *Proposed appeal set aside.*—The Report proposes that during the initial discussion in the legislative council it should be open to the council by a majority vote to request the Governor to refer to the Government of India, whose decision on the point should be final, the question whether the certified bill deals with a reserved subject. Some local Governments have criticised this proposal on the ground that such appeals would always be insisted upon, and that to allow them would impair the Governor's authority and increase the difficulties of his position. The majority minute by the five Heads of provinces takes the same view. We admit the cogency of these objections. We notice that the reference to the Government of India is not intended to determine the propriety of the certificate but only the question of fact, about which in most cases no doubt can reasonably arise. We think therefore that

there should be no appeal either from the Governor's original certificate or from any intermediate certificate, such as is contemplated in para. 254 ; and also that there is no need for the Governor to make any previous reference to the Government of India before certifying a bill.

83. *Mixed legislation.*—As regards para. 253 of the report the Punjab Government proposes that the final debate in full council on a certified bill should be dispensed with. It suggests that general principles will have been sufficiently discussed in the preliminary debate, that competent critics will have had their opportunities in the grand committee, and that the concluding debate must be expected to be not only infructuous but conducted without a sense of responsibility. We feel, however, that to omit the final debate might render the procedure less acceptable ; and for this reason, with the exception of Sir William Vincent, who agrees with the Government of the Punjab, we accept the proposals as they stand. As regards para. 254 of the Report, however, we suggest that before the procedure in respect of mixed legislation can be satisfactorily determined, it is necessary to be clear as to the Governor's responsibilities towards it. The Report proposes that there should be a power of certification when a Bill or amendment trenches on reserved subjects. It seems to us that rather more is required. Under his instrument of instructions the Governor will have certain peculiar responsibilities which are not identified with the reserved subjects. The maintenance of peace and tranquillity, for instance, cannot properly be treated as a reserved subject or indeed as a subject of any kind. It is a general responsibility involved in the conduct of the government. We think therefore that a bill, which is so unpopular with some section of the community as to be likely to provoke disorder, ought to be certified, if necessary, not merely on the narrow ground that reserved subjects are involved, because its operation may lead indirectly to an increase of the police, but simply on the broad ground that the public tranquillity is at stake. The Governor ought to be able to say "I consider that this proposal perceptibly affects the peace and safety of my province, and therefore I cannot assent to its being discussed otherwise than by a grand committee." We would in fact treat the Governor as having both a departmental responsibility for the reserved subjects and also a general responsibility for the peace,

safety and tranquillity of the province, irrespective of any subject. If both these responsibilities are laid upon him, what powers will be required in order to discharge them properly? It seems to us that he should be able either to stop at any stage, whether antecedent to an actual introduction or after introduction, any proposal for legislation on transferred subject which invades the matters, as defined above, for which he is responsible; or, if the legislature agrees, to take such a proposal in grand committee; but inasmuch as the main object of the proposed legislation will be the concern of ministers, he should not be empowered to force it into grand committee without assent of the legislative council. It follows that we accept the procedure suggested in paragraph 254, subject to the modification that the Governor may certify any Bill or clause, or amendment of a Bill, dealing with transferred subjects if it affects either (1) his responsibility for the peace, safety and tranquillity of his province or (2) the interests of a specified reserved subject.

84. *Assent, dissolution, etc.*—We agree with the proposal that the Governor should have power at any time to dissolve his legislative council. The value of this safeguard will grow with the growth of responsibility in the electorate, but it cannot for some time be expected to be very great. Moreover as the Bengal Government point out, the effectiveness of dissolution really depends upon the responsible character of the administration. It will not be possible for an official Government to take the field in an electioneering campaign; nor is it desirable that it should do so and thereby acknowledge some measure of amenability to the voter. It will also be necessary to provide, either by the statute or rule, against any undue delay in constituting the new legislature after the dissolution of the old. We agree that the assent of the Governor and also (for reasons which we shall develop in our next despatch) that of the Governor General, as well as that of the Crown, should be necessary to all provincial legislation. We agree that the Governor should have power to return a Bill for further consideration: and, again to anticipate our next despatch, we would add that in circumstances to be defined by rule he should be empowered to reserve certain provincial Acts for the assent of the Governor General. We agree that the Governor General should have power to reserve any provincial law for the Royal assent.

85. *Upper houses.*—In paragraph 258 of the Report is discussed the question of establishing upper houses in the provincial legislatures. The view taken by the authors is that while the idea had some theoretical advantages the practical objection was serious. It was thought that most provinces would be unable to provide suitable members for two chambers; an upper chamber largely composed of the representatives of landed and moneyed interests might prove too conservative; landed proprietors might be discouraged from seeking the votes of the electorates; and the delays attendant on legislation in two houses would be troublesome. Yet it was recognised that, when provincial councils approached nearer to parliamentary form the need for revising chambers might be the more felt, for which reason it was suggested that the statutory commission should examine the question further. These suggestions have attracted comparatively little notice in the opinions received. Some of the landowners' associations have urged the establishment of second chambers in which their interests would be strongly represented. Progressive opinion on the other hand inclines to regard a second chamber as an inconvenient encumbrance. It is apparent that a bicameral system would throw additional burdens on the local Governments and complicate the business of administration, which may partly account for the lack of interest shown by local Governments in the idea. It is, however, fairly clear to us that at the present stage the proposal is not a practical one; and the only point for consideration is whether, as two local Governments have suggested, powers should be taken from the outset of the reforms to establish second chambers at some future date when the need for them has become clear. It is argued that sooner or later the necessity must arise, and that unless provision is made for it from the beginning any subsequent attempt to do so will excite opposition. It seems to us probable, however, that the constitutional development of India may hereafter necessitate legislation by Parliament, at all events after the report of the first statutory commission. We have at present very little ground for saying that second houses will be required for the provinces. We do not think that in emitting to provide for their establishment now we are forgoing any material safeguard.

86. *Presidency of the Legislative Council.*—Closely con-

nected with the working of the legislature are the matters discussed in paragraph 236 of the Report as regards the control of business in the legislative council. The first proposal, that the Governor should remain President of the council, is generally supported by local Governments. Among non-officials there is some difference of opinion, and some political associations favour an elected president, but for the reasons given in the Report we are persuaded that the Governor ought to preside. The proposal that the Governor should nominate the vice-president is also generally accepted; but the suggestion that for some time his choice should be made from among the official members has encountered some criticism. We agree in this matter with the authors of the Report for the reasons which they give.

87. *Rules of business.*—The next proposal is that the existing rules of procedure should for the time being continue in force; but that they should be liable to modification by the legislature with the sanction of the Governor. This matter appears to us to require further consideration. There are at present four sets of rules regulating the business of the provincial legislative councils. Three are made under section 80 (3) of the Act and one is based on section 83. At present the executive makes the rules for questions, resolutions, and budget discussions, and in case of any new councils constituted after 1915 the executive also makes the rules of legislative business, but the legislature, with the sanction of the Governor, can alter them, although the Government of India may disallow such alteration. The intention of the Report evidently is that the new councils should take over the existing rules and alter them with the sanction of the Governor. But the present rules comprise both matters of a constitutional nature and matters of mere procedure. The new constitution cannot come into effect until the rules have been altered. It seems to us, therefore, that in future there must be two different sets of rules. The first would be fundamental, and would contain all matters affecting the powers of the different elements in the constitution. These should be made by the Secretary of State in Council and should be laid before Parliament, and should be alterable only by the Secretary of State in Council in the same way. The second would be subsidiary rules, or rather standing orders, governing mere questions of procedure. Since fresh standing orders

will be necessary, they should be made in the first instance by the local Governments, and thereafter they should be alterable by the legislative council with the sanction of the Governor. It seems necessary that at the outset the new orders should be made by the executive, because otherwise the legislative council might create a difficulty by declining to make them exact as it chose. We cannot admit the claim put forward by some non-official critics that the legislative councils should have an unrestricted right of altering their own rules.

88. *Use of the Vernacular.*—The Punjab Government has raised an important point in paragraph 19 of its letter, regarding the propriety of conducting debates in future in vernacular. This matter has a bearing both upon the question of the Governor's presiding in person and also upon the effective control of business. Speeches in vernacular are allowable in the legislative councils now ; but they are not often made and they can hardly be said to be encouraged. We agree with Sir Michael O' Dwyer that it must be anticipated that there will in future be a larger proportion of members who know little English, for which reason it is imperative that the use of the vernacular in debate should not be discouraged. But the question is by no means free from practical difficulty. Assuming that in future there are three groups in council, (1) the official members, (2) the rural members and (3) the representatives of the Indian educated classes, it will practically be only the third of these who will enjoy the advantage of a fluent knowledge of both languages ; and it is possible at least that they may be tempted to turn such a position to their advantage in various ways which it would be easy to suggest. It seems to us difficult, however, to provide formal remedy and we think that the matter must be mainly left for the Governor to deal with. In the last resort he might be armed by a rule with a power to call on any member, who is known to him to be proficient in either tongue, to address the council on any given occasion in one language or the other.

89. *Questions, resolutions and privilege.* The proposal that the right of asking supplementary questions should be extended to members other than the asker of the original question is generally accepted. In this matter we should prefer to follow the House of Commons practice as closely as

possible, and to give to the President full powers to check any abuse of the privilege. We think that no answers to questions should be furnished to members before the question has actually been put in the council. We agree that the Governor should have power to disallow questions, the mere putting of which would be detrimental to the public interests, and that his rule should specifically apply to supplementary questions. We agree also that the Governor's discretionary power of disallowing resolutions should be maintained. Some local Governments have raised the question of limiting the time for non-official business, and in particular of restricting the time allotted for discussion of resolutions. We agree that the rules must give the Governor as President power to allot the time available for the different classes of business and to prescribe the order of business; and it will be for consideration whether he should not have also a power of closure. We have considered whether power should be taken to take cognizance of and to punish breaches of privileges. At present the standard of conduct in these respects is capable of improvement, but we attribute this partly to the sense of unreality which has attended the business of the legislative councils in the past. There are objections to empowering a non-parliamentary executive to deal with such matters, and we think that the better course may be to leave the vindication of the legislature's privileges to the new sense of self-respect which may be expected to be developed in the councils as a result of coming changes. We accept the proposal that members of the future legislative councils should drop the style of Honourable.

90. *Official members' vote.*—One more matter connected with the conduct of business may be mentioned here. In paragraph 233 of the Report it is suggested that as a matter of practice official members should abstain from voting on transferred subjects, while on other matters official members should have freedom of speech and vote, except when the government considers it necessary to require their support. There is some diversity of opinion among local Governments upon these suggestions. It is urged that for some time to come administrative experience will continue to be vested chiefly in the official members and that as full members of the council and also, in some measure, as representing the views of the masses they should have a right, not merely to express

their views, but to give point to their opinions by the exercise of a vote. As regards the second proposal the Government of Bengal feel doubtful whether in practice it will often be feasible to relax the obligation of official members to support the Government ; indeed they think that it is only when the Government preserves an open mind upon any question that such freedom can be allowed. Our own view is that as regards transferred subjects it is undesirable to set up a convention, which may have the effect of emphasising the cleavage between official and non-official members , and that the existing convention by which official members invariably support government has been too rigidly observed. In both cases, therefore, we think that the official members of the legislature should have freedom of speech and vote, except in so far as the Government in exercise of the responsibility which it feels towards the particular question before council thinks it necessary to give them instructions.

91. *Effect of resolutions.*—The next subject discussed in the Report is the effect of resolutions. The arguments in paragraphs 168-170 appear to have had some success in convincing the more informed section of Indian political opinion that it is impossible to make resolutions of binding effect. This conclusion has been accepted by the non-official members of two provincial legislative councils. The opinions received do indicate, however, that there are still many persons with whom such arguments have not availed ; but these have adduced no reasons of weight which make it necessary for us to discuss the question further. So far as reserved subjects are concerned resolutions by the legislature will continue to be recommendations addressed to the Governor in Council, and we do not think it expedient to indicate the extent or to suggest the circumstances in which the government should comply with them. This matter must be left to be settled in actual working. The practical effect of resolutions upon transferred subjects will be further examined when we consider the administration of such subjects by the Governor and ministers.

92. *Standing Committees.*—It is now time to consider certain devices proposed in the Report which are intended to set up a closer connection between the executive and the legislature. The first of these is the proposal to establish standing committees, elected by and from the legislature, to the departments under each member of the executive. The



idea is that such committees would be purely advisory, and would ordinarily be consulted on questions of policy or new schemes of large expenditure, and on the annual reports. The majority of provincial Governments accept the proposal, non-official opinion is not a little divided. Critics urge that the committees will impede business, and induce delay, that they will weaken the sense of responsibility of the executive, that they will open the door to intrigue, and that their purpose can better be served by advisory committees appointed to deal with particular questions, and finally that they will be difficult both to constitute and to assemble for business. The Government of Bengal point out that when a complete system of responsible government has been established there will be no place for such committees. They demur to the establishment of a finance committee except for purely budget purposes, and they affirm that it will be impossible to enforce the obligation of respecting confidence upon which the Report lays stress. It has also been urged that the association with the administration of elective committees, particularly on reserved subjects, however limited the original scope of their functions, involves a departure from the main framework of the Report. Those who take this view believe that it will not be possible for the committees once instituted to be kept on a purely advisory basis. They think that the power of the elective principle will assert itself and that, as has happened in other countries, where the committee system flourishes, these bodies will tend to grow into a rival executive. These apprehensions seem to us exaggerated. This idea of standing committees was first put forward as a means of associating the legislature with an irresponsible executive; and even after the appointment of ministers had been proposed, it was decided to retain them as a means of providing a certain number of people with some acquaintance of administrative methods, as a means of training them to fill the office of ministers. We propose, therefore, to retain them; but we wish to make it perfectly clear that we do so only for educative purposes. We do not intend that the committees should come to control the administration and we think that, if any attempt is made to do so, it should be resisted from the outset. Moreover we would leave to the Governor entire discretion to determine to which departments, if any, they should be assigned and to decide the matters which come within their cognizance.

93. *Council Under-Secretaries.*—The second suggestion which the Report makes with the object of bringing into closer touch the executive and the legislature relates to the appointment of under-secretaries from among members of the legislative council. This suggestion has been favourably received by most of the Governments which have noticed it, and it has further gained much non official support, although there is a strong body of opinion that such appointments should be restricted to the elected members. The Government of Bengal take emphatic objection to the proposal. They think that the introduction of under-secretaries appointed from the council would complicate an already difficult situation, and that the responsibilities to his constituents of an under-secretary who is an elected member may be a cause of embarrassment. It has further been put to us that an arrangement, by which members of the legislature (and possibly elected members) are attached to and share in the administration of the various departments, involves a departure from the scheme of the report, and is likely to accelerate the process by which the legislature will assert control over the executive. Those who take this view contend that elective under-secretaries must like ministers be amenable to the legislature; that consequently their association with ministers in transferred subjects merely means an informal addition to the number of ministers, while their introduction into the reserved departments involves the admission of a foreign element into the official control of these. We set down these objections, not because we agree with them, but because they at all events emphasise the need for making our intentions clear. We do not intend that these under-secretaries should share in the administration or be regarded as extra ministers. Our intention merely is that members of council or ministers should be able, if they choose to appoint some one from the legislature, to assist them in expounding to the legislature the departmental view. Such appointments will be entirely optional; it will be open to the member of council or minister, if he prefers, to choose a nominated or an official member from the legislative council. The appointment should be honorary, for if salaries were attached to these appointments and were voted by the legislature, it is evident that the holders must become amenable to the wishes of that body. We desire to

give these appointments as informal a character as possible. We consider that it is not necessary to make any legal provision for them. It should be left in each case to the local Government to determine whether such appointments should be made, and to regulate the duties of the office.

### THE GOVERNOR IN COUNCIL.

94. *The Governor in Council, administration.*—We have now laid before you an outline of the various parts of the provincial constitution. It is time to describe how the two portions of the machine will work, in the first place severally and secondly in unison. Let us consider first the administration by the Governor in Council of the reserved subjects, his responsibility for which is set forth in paragraphs 213, 215, 218, 222, 223, 292 and 354 of the Report. So far as the mere business of administration is concerned there will, in purely reserved subjects, be practically no change from the existing practice. In most cases the member in charge will be able to dispose of the question coming before him as it will represent only some detail of an accepted policy. In some cases he will have to consult the Governor or his colleagues, and if the case is of importance, or if there is a difference of opinion, he will ask the Governor to take it formally in executive council. The Governor will also take this action when he sees fit on his own initiative ; and though the Governor will hold no portfolio of his own, the permanent head of the department will always be able to invite the Governor's attention to any case which he thinks the Governor should see. When in any of these ways a case comes before council it will be decided by the majority vote , but the Governor will have power to issue any order against the wishes of his council in any case in which "the safety, tranquillity or interests" of his province, or a part thereof, are or may be, in his judgment, essentially affected. Any order so issued will be the order of the Governor in Council.

95. *Legislation.*—Secondly, as regards legislation it is evident to us that in all difficult cases the working of the system will depend very largely on the certificate power. In this respect matters must be left mainly to the Governor's discretion. His instrument of instructions can only guide him in very general terms ; but he will of course realize that

in so far as he does not use his certificate power he must be prepared to accept the shaping of his legislation by the majority of the legislative council. On the other hand, although we propose that there should be no appeal from his decision, the Government of India will retain the legal power of controlling him.

96. *Supply*.—The division of the provincial resources between two halves of the government, which we have proposed in paragraph 73 above, will make it easier for the Governor in Council to finance the reserved subjects than if the supply for them were likewise dependent (except for his power of restoration) upon the vote of the legislature. Resolutions upon the reserved portion of the budget as on matters of administration will be advisory only, and it will be left to the Governor in Council to determine whether or not to give effect to them.

#### THE GOVERNOR AND MINISTERS.

97. *Rules of business*.—Now let us consider the handling of the transferred subjects. The Report proposes (paragraph 219), as we think rightly, to impose a particular personal responsibility upon the Governor in respect of their administration: and this raises questions which we shall further examine in a subsequent paragraph. It is clear, however, that such responsibility makes it necessary that there should be some rules of business to regulate the disposal of cases in the transferred subjects. Such rules should allow cases of minor importance to be disposed of by or under the authority of ministers, and should require that cases of major importance are laid before the Governor. They should ensure that the Governor is promptly informed of cases disposed of by ministers, and they should provide that the Secretary or permanent head of the department is empowered to bring to the Governor's notice any case which he considers that he should see. It may be expected that the Governor will direct all cases of particular types to be brought to him as a regular practice. It is a matter of some difficulty to decide whether the rules of business should recognize any collective responsibility on the part of ministers in cases where there are more than one. It seems to us inevitable that among ministers the habit of consultation and

joint action will develop and indeed should be encouraged. The analogy of cabinet procedure, however, cannot hold good, for so long as the relations between the Governor and his ministers are as we have described them, there can be no prime minister. Meetings which ministers may hold among themselves will not acquire the authority of cabinet meetings; and we do not advise that the rules of business should attempt to do more than to regulate the relations between the Governor and his individual ministers. At the same time we should expect that, as a matter of practice though not of rule, the Governor will regularly meet his ministers in consultation.

98. *Relations with legislature.*—Ministers' administration of transferred subjects is definitely meant to be conducted in accordance with the wishes of the legislature. We do not propose of course that resolutions should be binding upon them, or that their authority should be more than that attaching to motions in the House of Commons, where in respect of any motion that is carried it is left for the government to decide whether the House is likely to insist upon enforcing its wishes by any of the ordinary means open to it. We recognize, however, that in the new legislative councils the responsibility of ministers cannot but be affected in practice both by the presence of official members and by the communal character of much of the representation. We think therefore that the measure of ministers' dependence upon a majority support must be left to define itself in actual working. If ministers encounter a hostile vote they must no doubt seriously consider their position. We think that in such circumstances the advice of the Governor will be of great value to them. The probability is, we anticipate, that owing to the entire novelty of representative methods in India, ministers may be inclined to show too little deference to a vote in the legislature rather than too much, and in that case the Governor will at all events be in a position, if he thinks necessary, to enforce the traditions of responsible government by requiring ministers to resign.

99. *Legislation.*—As regards legislation the position will be similar. We propose to make no change, except as provided by the certificate procedure, in the existing rights of private members to bring bills before the council; but we trust that the working of the new legislative councils will tend

to follow well-established lines; that most of the important legislation on transferred subjects will come to be recognised as the proper concern of ministers who alone have the requisite knowledge to formulate policy; and that if their measures are defeated or altered upon any material point ministers will again be confronted with the duty of considering their position, while the Governor will be at hand to give them good counsel in the matter.

100. *Supply*.—The budget of the transferred subjects will be explained by ministers in the legislature, where it will not be voted or passed. It will be open to members to move resolutions on any matters upon which they desire to see the provisions modified. We think that no proposals for extra expenditure should be addressed to the legislature other than by a minister: and we are desirous that, as far as possible, the restraints upon proposals for extra expenditure which prevail in the House of Commons should be observed. We are prepared, however, to acquiesce in the continuance of the existing practice in the present councils by which any member can propose the reappropriation of sums from one budget head to another. We should limit this so as to ensure that no such transfer as between a reserved and a transferred grant may be proposed; but to withdraw the privilege entirely, before full responsibility is reached, might be misunderstood in India. We have already advised that no resolution on the budget should have any binding force; though, if it is carried against a minister, it may compel him to consider the propriety of his remaining in office.

101. *Governor in relation to ministers*.—It is now time to consider the vital matter of the Governor's relations with ministers. The report says:—"We do not contemplate that from the outset the Governor should occupy the position of a purely constitutional Governor who is bound to accept the decision of his ministers. ... We reserve to him a power of control because we regard him as generally responsible for his administration, but we should expect him to refuse assent to the proposals of his ministers only when the consequence of acquiescence would clearly be serious." Let us consider rather more closely what this would mean in practice. When a case comes to the Governor in which he is doubtful about the order proposed by the minister he will discuss it with the minister, or possibly if he thinks fit with

both ministers. There will be no voting, and no formal overruling as in section 50 of the Act. The Governor will advise the ministers as to the difficulties which he feels, and it may be hoped that the upshot will be a decision which ministers can defend and the Governor accept, but, if the Governor thinks that the minister is going seriously wrong, he may refuse to issue the proposed order, or he may require an order to be issued which differs from it, or he may direct action to be taken where the minister has proposed no action. We quite agree that the circumstances in which the Governor should take such action should specifically be defined in his instrument of instructions, which should express as definitely as possible the peculiar responsibilities with which Parliament has invested him. We are decidedly of opinion that the instrument of instructions should be a published document. We hope to propose to you a draft of its contents, as soon as we have received the report of Lord Southborough's committee; but, as some local governments have pointed out, any formula that can be devised must be framed in general terms, and its efficacy must largely depend upon the Governor's vigilance, judgment and good sense. When an order ultimately issues, whether it is the original proposal of the minister or the result of the Governor's intervention, it will issue as an order of the Governor acting "after consultation with" his ministers. The expression "on the advice of" is not in accord with what is proposed, "with the advice of" might be misleading, and we should prefer to avoid misconception by refraining from the use of words which imply specifically a closer approach to the position in self-governing countries than is actually intended.

102. *Settlement of differences.* When full allowance has been made for the effect of better understanding and the desire for co-operation, which it may be hoped that the reforms will induce, there still remains the need to consider the possibility that serious differences may occur between the Governor and ministers. We must remember that not only will the former have heavy responsibilities laid upon him for the good administration of his province, but he will also be the vehicle of any orders issued by the Secretary of State or the Government of India in the exercise of their general directing and controlling authority over transferred subjects. That authority is indeed to be res-

tricted to the utmost. We agree entirely with the principle suggested in paragraph 291 of the report that in respect of matters in which responsibility is entrusted to representative bodies in India Parliament must be prepared to forego the exercise of its own control, and when we come to deal with the recommendations of Lord Southborough's committee, we hope to be able to translate this restriction into definite terms; but whenever the control of superior authority, however restricted, has to be applied in future, we think that it should take the form of directions to the Governor and not of orders to ministers, and that the Governor should give effect to those directions by intervention in the manner which we have already described. In such cases, as well as those where the Governor has of his own motion differed from them, it is possible that ministers may find themselves unable to acquiesce in his action. When a similar position arises in respect of reserved subjects no difficulty presents itself. A member of council, when he finds himself unable to obey an order from a higher authority or an order passed by the Governor under section 50 (2) of the Act, can resign his post; and if he stays on and refuses to obey the order, he becomes amenable to service discipline and may be removed. Ministers however will not be amenable to official authority and therefore to avoid an impasse the Governor must have the ordinary constitutional right to dismiss a minister who refuses either to work in harmony with him or to resign. It is necessary, however, to take the case one stage further. We feel it important to decide definitely how insoluble disagreements between a Governor and ministers are to be concluded; for it is only when this point is reached that our proposed system of dualism is put to the supreme test. A minister, who resigns or is dismissed by the Governor, may have behind him the opinion of the legislature, and accordingly the Governor, being restricted in his choice to the elected members, may find it impossible to appoint successors who will work with him. In that event he would dissolve his legislature, but if the new legislature proved equally obdurate, there would be only one course open to the Governor, assuming (as will occur, we hoped, but rarely) that he felt it impossible either to give way upon the point at issue or to effect a compromise. We think that against this ultimate emergency provision must be made in the scheme; and that the only remedy is for the



Governor himself to assume the control of the administration of the departments concerned, until the causes of the difference disappear, reporting this action and the reasons for it through the Government of India to the Secretary of State. The King's government must be carried on ; and there must be some effective safeguard against the main danger which threatens the working of the scheme, namely, that differences of opinion between the two elements in the government may lead to a deadlock fatal to the administration. We feel moreover that such a power would also be a valuable deterrent to factious and irresponsible action. We doubt whether such administration by the Governor should be more than temporary ; and therefore we would provide that if the Governor is unable within a period of say six months to find ministers who will accept office he should move the Secretary of State through the Government of India to retransfer the portfolio in question formally to the charge of the Governor in Council. It is clearly necessary that the Secretary of State on behalf of Parliament should be armed with power at any time to defeat attempts on the part of the legislature to bring government to a stand-still. If the Governor while temporarily administering a transferred subject were unable to secure for the legislature the supplies required for its service he should be empowered to extend on such service sums not exceeding the total provided for it in the preceding budget.

#### JOINT WORKING OF THE TWO PARTS OF GOVERNMENT.

103. *Cases concerning both parts.*—So far we have considered the working of each side of the Government without reference to its reaction on the other ; but there is a large measure of truth in the contentions put forward by the Bombay Government and others, that many cases, although the department which should decide them is clear, involve the interests of other departments ; and for the treatment of such matters it is necessary to make definite provision. When a member of council finds himself with a case for decision, which concerns a minister's department, it will be his duty to consult the minister, and *vice versa*. If they cannot agree, then before the authority which is regularly seized of the case

passes orders upon it, that authority will inform the Governor of the disagreement, and it will be for the Governor in his discretion either to intervene or to let the case take its ordinary course. Moreover if he thinks fit he may summon the member and the minister and attempt to compose their differences. Failing in that he may call in any other members and other ministers or he may convoke his whole government, according to the interests involved or the importance of the case ; but the case and its decision will not be removed from the department to which it properly belongs.

104. *Cases of doubtful jurisdiction.*—So far we have dealt with cases in respect of which the jurisdiction is not doubtful. There will, however, be cases in which the issues are of such a nature that two or more departments cannot agree with which the right of action lies. In such cases the jurisdiction must be settled by the Governor and his verdict must be final, in this respect we entirely agree with paragraph 239 of the Report. But the proposition will not always be simple ; in some cases a short discussion may settle the point ; but in others the mere decision as to jurisdiction will be plainly seen to carry with it the ultimate attitude of government towards the substantive question. In such cases therefore where the right of action is either doubtful or in issue, we think that the rules of executive business should empower the Governor to call his whole government together for a discussion of the subject before deciding who is to formulate the orders. It would no doubt be possible for the Governor, after hearing the discussion, to sum up and to dictate the substantive decision, as indeed appears to be contemplated in paragraph 221 of the Report. But we see objections to enlarging the field in which the individual Governor will act as the local Government, and it seems to us that our proposal according to which the Governor would decide only the question of jurisdiction keeps closer to accepted constitutional practice.

105. *Consequential orders.*—There is one more point. It may happen that a decision taken in one department will necessitate certain action in another department, which the latter objects to take. In this case also there must be some effective means of securing unity of action and of preventing the decision of Government in one department from being nullified by the inertia or opposition of the same Government

in another department. We think that for this purpose the Governor must be armed with power to issue orders in a reserved department which are necessitated by a decision which he has approved in a transferred department, and *vice versa*.

106. *Clearer definition of responsibilities.*—This analysis of the probable working of the new arrangements leaves us to propose a re-statement of the procedure contemplated in paragraph 221. We certainly do not wish to suggest that the Governor may not, at any stage and for any purpose, convoke meetings of his entire government. Indeed we think that particularly in the earlier days of his administration he may find such meetings very helpful, while on many matters of general administrative interest they would be the usual practice. But the application of our fundamental principle that the responsibility of both halves of government must be clear and distinct forbids us to carry their association to the point at which responsibility begins to become blurred. We consider that the Governor should have unfettered discretion in deciding whether to bring together the members of his council and ministers for common business. Moreover our test principle requires that it should be perfectly clear to all concerned by which of the two authorities a particular order is issued. We do not apprehend that less authority would be felt to attach to orders of ministers than to orders of the executive council. We agree with the view expressed in paragraph 259 of the Report that both will have equal authority as orders of Government ; but the electorate ought to be able, if they wish, to know whence any given order originates. We strongly desire therefore to see the two cases distinguished in some way (whether by a change of style, or by some marginal indication of the authority in possession of the case) that will enable the recipients to recognize which of the two halves of the government is accountable for the decision.

107. *Limitations on "united front."*—The proposal made in paragraph 222 of the Report that the decisions of the government should be loyally defended by the entire government has attracted some criticism, both as tending to obscure responsibility and as putting an undue strain upon the individual conscience. We entirely agree that a minister confronted by the legislative council must loyally defend any action which he has taken with the concurrence or at the

instance of the Governor. If he has been overruled by the Governor, he may of course resign, after setting forth his personal views ; but if he has accepted the Governor's decision without resigning, then constitutional practice clearly requires that he must defend that decision in the legislature without disclosing the difference of opinion between himself and the head of the government. Nor can it be tolerated that he should while remaining a minister attack in the legislature the acts of the other half of the government. Exactly the same obligation in our opinion attaches to members of council ; they must not manifest to the legislature their disapproval of acts of ministers which have been approved by the Governor. There must be established a convention by which each half of the government refrains from opposition to the other half. But more than that it seems to us quite impossible to expect ; neither half can be required to give active support to a policy which it has not endorsed. We think that when a minister has accepted a course of action which the Governor has pressed upon him, the other half of the government should be prepared to support him if he is challenged in council, and if a vote of "no confidence" is carried against the minister for action which the Governor has approved, the minister would not necessarily resign office until he felt that there was no hope of his receiving future support from the legislature.

108. *Review of these proposals.*—This completes our picture of the working of the joint arrangements. In view of the criticisms which the scheme has encountered we have felt it necessary to go into these matters at some length. It is obvious that the successful working of the constitutional side of the government will depend very largely, as paragraph 153 of the Report points out, upon the gradual building up of conventions, customs and traditions based upon experience and acquired political habit. There must, however, be rules to bring the two halves of the government into their right relation, and indeed, in so far as the responsibility of the ministers is to be tempered by the Governor's authority, it is apparent that their relations with him must be regulated by rule to an extent which would be intolerable in a completely developed responsible system. Our object has been to indicate the matters upon which rules will be necessary while endeavouring to render them as elastic and discretionary as possible.

For the rest we think there is nothing for it but to depend upon practice and the growth of a stable political consciousness in the ministers, the legislatures and the electors. This must be a growth of time; but, for it to grow at all, it must have reasonable scope, and this we have endeavoured to provide.

109. *Summary.*—At this point it seems desirable that we should sum up our impressions of the working of the machinery as a whole, and of the manner in which it may be expected to fulfil the purposes for which it is designed. The fundamental idea is that the Governor in Council shall be armed with sufficient power in the administration of reserved subjects to discharge the responsibility for them which he owes to Parliament, while ministers will have the widest liberty to administer transferred subjects according to their own ideals, but in constant sight of, and comparison with, the working of their official colleagues. We do not intend that either side should interfere with the other; and to us it seems that if ministers devote themselves whole-heartedly to the success of their own task, it will provide them with adequate occupation and opportunity to prove their fitness for further responsibility. It would, however, be disregarding the practical certainties of the future to conceive of the reserved and the transferred branches of public business as watertight compartments which will engage exclusively the energies of their respective administrators. The subjects administered by the two halves of the government will constantly touch and often overlap; and occasions for pressing the popular view on the Governor in Council and endeavouring to deflect his policy will be frequent. Ministers will be in daily intercourse with their official colleagues, and if they are men of the right stamp, they will inspire confidence and be often consulted about matters outside their own sphere. The legislature will not hesitate to employ freely its power of expressing itself through resolutions on the conduct of reserved departments. Even in legislation it is to be expected that some Governors will not exercise the same vigilance in the use of their certificate power as others. Standing committees and council under-secretaries may try to develop activities, with which it is not our purpose to endow them. The scheme thus clearly gives the legislature an opportunity of influencing the management of the reserved subjects to a greater extent than

the present legislative councils influence the present administration. We must anticipate that, in spite\* of the fact that ministers will have no responsibility for reserved subjects, there will be a tendency to convert this influence into control. In brief, as we anticipate the course of events, progress towards full responsible government will take two forms. One will be the regular periodic advance, as defined by the statutory commissions, and measured by the further and still further transfer of the once reserved subjects to ministerial control. The other, informal but always at work, will be the increasing influence which the elective principle will acquire over the subjects retained in official hands. But there will be simultaneously a third process, which is not in our programme and which we shall have steadily to resist,—the constant endeavour to transform influence into ascendancy over those branches of the administration for which the responsibility lies with the official government.

110. *Future consequences.*—We set these things down, not because we are afraid of them, but because it ought to be perfectly clear what lies in front of us, so that we may shape our conduct accordingly from the outset. The influence of those who represent the electorate is growing now, and will grow. We fully recognise, as an assured consequence of the political developments which we are discussing in this despatch, that even in reserved subjects our administration will have to be conducted with a closer regard to popular sentiment, and with less thought for theoretical efficiency. In many of its methods, our work will lose its peculiarly British characteristics and assume a more definitely Indian type. We view this prospect with no possible disapproval. We trust that, by greater deference to the wishes of the popular representatives, we shall in return secure their more cordial concurrence in what we regard as the essentials of good government. But over those essentials we must retain unquestioned control. The governing power of Parliament must preserve its vitality. The "superintendence, direction and control" of the Government of India must always be ready for use. The Governor and his official colleagues must employ their powers resolutely to prevent any deleterious lowering of the standards and ideals of the administration which they hold in charge for Parliament; and we trust that this duty will be made clear in the Governor's instrument of

instructions. In so far as standards are relaxed or superior control atrophies, the elective principle will tend to assume the direction of business outside its own transferred sphere; and in proportion as this occurs, the control of Parliament and the Government of India over the reserved subjects will be weakened. This would be, in our judgment, fatal to the success and foreign to the whole spirit of the forward movement upon which we are now embarking.

#### FUTURE CHANGES.

III. *Changes after five years deprecated.*—The last matter affecting the provincial part of the scheme is the proposals for its future development. The intention of para 260 of the Report is that five years after the constitution of the first reformed councils the Government of India should consider applications from the provincial governments or legislatures for the modification of the lists of reserved and transferred subjects and make recommendations to the Secretary of State; and also that they should be able to direct that ministers' salaries should be voted annually by the legislature, and that failing any such direction by the Government of India the legislative councils should have power to demand by resolution that ministers' salaries should be so voted. This is not a matter which has attracted very general attention, but to us it appears to be one of some importance. Local Governments are divided on the point. The Government of Madras while not opposed to a periodic survey, question the advisability of trying to frame any regular time-table of progressive stages, and would leave it to government as a result of practical experience to modify the division of subjects. The Governments of the United Provinces and Bihar and Orissa accept the proposal, but the Governments of Bengal and the Punjab criticise it severely. The intention no doubt was to provide some machinery by which omissions or anomalies could be corrected. It has, however, been urged that the arrangement proposed is open to serious objections. The whole scheme of reform is admittedly experimental and progress is to depend on results. If the plan is to succeed, there must be a sufficiently long truce in the struggle for power. As some local Governments have pointed out, any division of subjects invites immediate further demands; the disadvantage of this

might not be felt if it were clear from the first that such claims would not be considered for a prolonged period, but if there is power with the Government of India to propose the transfer or re-transfer of subjects after a period of five years only, there is little prospect of tranquillity. As it stands, the proposal has also been regarded in some quarters as perceptibly detracting from the stability which the arrangement of statutory commissions purported to provide, and the criticism has been pressed that a period of five years is too short to afford any real test of the capacity of the electorates, whatever results emerge in such a period may be largely accidental. We have already expressed the view (para. 40) that the salaries of ministers should be placed on the transferred estimates from the outset. If this suggestion is accepted, then one of the principal grounds for providing for any revision after a period of five years will disappear. We are therefore agreed that it will be wise to omit this *ad interim* procedure, and to rely solely on the statutory commissions for the progressive stages of development.

112. *Periodic Commissions* :—The idea of periodic statutory commissions has been welcomed by Indian opinion, which has for the most part confined its criticism to points of detail. Official opinion is less unanimous. The position of the Madras Government has been explained in the previous paragraph. The Government of the United Provinces and the Chief Commissioner of Assam adopt the view that a Parliamentary Commission of unknown personnel is not the best authority to estimate the requirements of the political situation in India : they would prefer to leave it to the Government of India and the Secretary of State to time and to regulate the rate of progress. We find ourselves unable to accept these views. We think that a commission appointed *ad hoc* will be able to deal with the complicated questions involved more expeditiously, more authoritatively and more impartially than the Government of India, and that it will be advisable to deal with all the provinces at once rather than *seriatim*. We desire in fact to lay the greatest stress on the advantages of enquiries at stated intervals by an outside authority whose recommendations will carry weight both with Parliament and with the people of India. We attribute the favourable attitude of Indian opinion on this matter largely to the confidence of the people in a com-



mission of the nature proposed, and to the guarantee implied that the whole political situation both in the provinces and the Government of India will come under review at regular intervals. Any suggestion that future progress should depend entirely on the initiative of the Government of India would meet with the strongest opposition and, we think, rightly. We ourselves consider these commissions to be the most substantial safeguard which the scheme affords against a policy of drift ; and we are convinced that the success of the whole scheme will be gravely jeopardised if its future development is left to be treated in a hand to mouth fashion according as the Government of India find time and inclination. We have considered the criticisms in regard to the length of the periods which should elapse between one commission and another, but we do not desire to recommend any change in this respect as the periods proposed appear to us to be suitable.

#### THE GOVERNMENT OF INDIA.

113. *The executive.* We come now to the changes suggested in the Government of India itself. Paras 266-269 discuss the causes which may have been responsible for delay in the disposal of business. As regards these we need only say that we welcome any inquiry which offers a prospect of affording much-needed relief to the departmental staff in our headquarters offices. It follows from the fundamental principle laid down in para. 190 of the Report with which we entirely agree, that there can be no division of subjects in the Government of India. The proposal (para. 271) that the Indian element in the Governor-General's executive council should be increased has met with practically no opposition, but there is a decided feeling among Indians that it does not go far enough, and that at least half the members of the council should be Indians. We recommend the acceptance of the proposal in the report. The main advance will be made in the provinces ; the Government of India have heavy responsibilities of an Imperial character ; and we consider that the appointment of a second Indian member will be sufficient to give Indian opinion such further weight in their innermost counsels as it is at present wise to give it. The further proposal that such statutory restrictions

as now exist in respect of the appointment of members of the executive council should be abolished does not commend itself to us without some modification. The statutory provisions affect both the number of members of council and the qualifications of a proportion of the members. We agree that the former restriction, which is contained in section 36 (2) of the Government of India Act, 1915, should be abolished, but the advantage of abolishing the latter seems to us more doubtful. We would maintain the statutory qualification as it stands in respect of two of them, and we would also secure by statute the appointment of two Indian members. We would also keep the statutory requirement that one member of council should have legal qualifications. We contemplate that, if there is room in council, after the need of securing other special experience has been satisfied, there should continue to be as in the past a third member with ten years' official experience. But in view of the present uncertainty as to the total strength of the council in future we see great difficulty in defining its constituent parts in terms of any fraction of the whole, if we are to provide for the other elements which it is often desirable to admit.

114. *Composition of Assembly.* The duty of considering the composition of the Indian Legislative Assembly was entrusted by you in the first instance to Lord Southborough's franchise committee. As this despatch is being written we have received a copy of the committee's report, but have not yet been able to examine it fully. Our conclusions upon the structure of the Indian Legislature must necessarily be affected by considerations which it was not open to the committee, under the terms of their reference, to take into account; and they will be communicated shortly in our second despatch. The remarks that follow should therefore be read as contingent on changes which we may hereafter find it necessary to propose in the scheme of legislative arrangements. For the moment we merely desire to indicate briefly how the proposals of the Report have been received, and to mention certain provisional conclusions which having regard to the limitations of their terms of reference we placed before the committee. In the absence of the detailed information which had been collected in the provinces by the committee it was useless for us to attempt to construct any complete or final scheme, and we confined ourselves therefore to certain considerations

of a general nature. The most important of these had regard to the method of election. Opinion generally favours direct election, though doubts have been raised as to its practicability. We ourselves hold that to the Legislative Assembly the representatives should, if this is in any way practicable, be returned by direct election. On the information at present before us we are not satisfied that a system of direct election is impossible. If so it proves, and if a system of indirect election is unavoidable, then we hold that there should be a material difference of method between the elections to the Assembly and the Council of State. Another matter which has aroused some interest is the distribution of representation between the provinces. This problem is by no means free from difficulty. No single factor can be taken as the basis of distribution, and the apportionment of due weight to each of the various factors must, as we have said, be carefully considered in connexion with the franchise committee's proposals.

115. *Official members, etc.*—The number of official members of the Assembly must, we think, be determined with due regard both to the composition of the Assembly as a whole and to that of the Council of State, and also to the relations between the two chambers. Neither chamber can be considered without reference to the other, and questions of composition cannot be divorced from questions of functions. It is suggested in the Report that in case there is no room in the Assembly for the secretaries to the Government of India, it may be expedient to allow a secretary to speak and vote on behalf of the member in his department when occasion demands. This proposal does not commend itself to us. Membership of the legislature even if *ex officio* seems to us a personal attribute, and we cannot regard as convenient or constitutional a plan, whereby either of two persons could occupy a certain seat according to arrangements made between them. We have dealt elsewhere with the alternative method proposed for meeting the inconvenience arising out of the absence of secretaries from the Assembly. As regards the rights of official members in the matters of speech and vote our views have already been explained in para. 90. We propose that in this matter the practice should be the same in the Indian legislature as in the provincial councils. We agree that the President of the Assembly should be nominated by the Governor-General, and that for the present he should be

selected from the official members. An influential section of Indian opinion is in favour of an elected President, but we are not prepared to agree to this. We agree that the Governor-General should have means of addressing the Assembly, but inasmuch as he would not be a member of that body it seems to us unsuitable that he should intermittently occupy the President's chair. We think that arrangements should be made by which the Assembly should attend the Governor-General when he intimates his intention of addressing it. We support the proposal that members of the Assembly should forego the style of "Honourable" in future.

116. *Composition of Council of State*—The composition of the Council of State does not come within the terms of the franchise committee's reference, but it is so closely bound up with the composition of the Assembly that, as we have said, we must consider the two questions together. In the present despatch we can do no more than give some indication of the general reception accorded to the proposal that a Council of State should be created. Opinion on this subject is very much divided. Official opinion and the more conservative section of Indian opinion is generally favourable to the principle of such a body, but there are many suggestions for modifications in detail. The Government of Bengal consider that the composition of the Council as proposed in the report is unnecessarily intricate, and that since an official majority is avowedly necessary it should not be restricted to the narrowest possible limit. They also remark on the difficulty of securing members who will be representative of Muslim and landed interests in India as a whole. This particular point is one which the franchise committee have examined, and we shall therefore have the assistance of their views in dealing with it. The difficulty has been fully realised by the interests concerned, and it has been urged that the special representation proposed in the Report is inadequate and will not satisfy the communities concerned. Connected with the same point is the Sikh claim for special representation, which has been pressed by the principal Sikh organisation as well as by the Punjab Government and various individuals. Again the proportion of elected members is not considered adequate by a section of the Indian supporters of the Council, who urge that at least half the members should be elected. The proposed association of ruling chiefs with the Council of State has given

rise to some misunderstanding, and has been misconstrued as meaning that chiefs would be eligible for membership of the Council. The inclusion of the chiefs would clearly be unpopular and was never contemplated by the authors of the Report. Those who oppose the Council belong to two very different schools of thought and base their opposition on entirely different grounds. There are first the non-official Europeans who generally feel that any change in the Government of India is to be deprecated. They would agree to a small increase in the Legislative Council in order to make it more representative, but they are opposed to the proposal that a second chamber should be created to secure to the Government the powers which (as they hold unwisely) it has surrendered in the Assembly ; and they are not entirely satisfied that the composition of this second chamber is such that it will sufficiently secure these powers. The other opponents of the Council are the advanced Indian politicians. Their position is that it is useless to give an elected majority in the Assembly, and at the same time to create an upper chamber which will in some measure supersede the Assembly. They allege that the Council of State will take away all that an elected majority in the Assembly might secure. What they desire is a single legislative chamber with a large elected majority ; they would have the Governor-General in Council rely for his affirmative power of legislation on reserved subjects (for they suggest a division of subjects in the Government of India as well as in the provinces) by means of regulations which would be in force for one year unless renewed by a vote of 40 per cent of the members present. If a Council of State is created, they urge that at least half its members should be elected. In regard to these claims it is only necessary for us to say that we stand by the principle laid down in the Report that the Government of India must remain wholly responsible to Parliament and, that saving such responsibility, its authority in essential matters must remain indisputable. We wholly dissent from the view that the Council of State will reduce the Assembly to a negligible quantity. We believe that with the two chambers constituted as proposed in the Report the Assembly with its large popular majority will be able to make its wishes felt in a wide range of subjects. This leads us to our next point, namely, the powers of the two chambers.

117. *Legislative arrangements.*—The exact form which

the legislative arrangements should take will depend on what is settled as regards the composition of the two chambers. As we have said, it is cardinal with us that the authority of the Government of India must remain unimpaired in essential matters. Apart from such exceptional machinery as that of the veto, ordinances, and regulations the Report proposes to attain this end by the provision made for joint sessions and by the certification procedure. The extent to which the device of joint sessions will afford any safeguard depends chiefly on the proportion and disposition of non-official members. The use of the certification procedure will also be affected by the constitution of both chambers : because the need for recourse to certification will depend on the Assembly, while the Council of State must be so constituted that the Governor General in Council can count securely on its support when occasion arises. Criticism of the Report's proposals has been focussed chiefly on this question of certification. Some critics see no hope of essential measures being carried otherwise than by certificate ; while at the same time they fear that the power of certification is too restricted to be freely used. Indian opinion on the other hand holds that the power is too wide and urges that from its definition the general term "good government" should be omitted. It proposes that it should be open to the Governor General in Council to certify a measure only if it affects the defence of the country, foreign and political relations or peace and tranquillity, and further that any measure passed with the aid of the certification procedure should be in force only for one year. Some critics would positively restrict the competence of the Indian legislature. They suggest that no legislation of an exceptional character in abatement of the freedom of the press or public meeting or open judicial trial should be carried through the Council of State alone, or against the opinion of the Assembly, except in time of war or internal disturbance, without the approval of the Select Committee of Parliament on Indian affairs, unless such a measure is limited to a period of one year. The scope of this power of certification is a matter of absolutely vital importance, and for the reasons already given we must reserve our recommendations in regard to it, until, as in our next despatch we hope to do, we can place before you a complete legislative scheme for the Government of India.

118. *Assent, dissolution, etc.*—There remain certain subsidiary questions connected with the Indian legislature.

(1) The proposals in para. 283 of the Report to the effect that the Governor-General and the Secretary of State should retain their existing powers of assent, reservation and disallowance to all acts of the Indian legislature and that the Governor General in Council should continue to have power to make regulations under section 71 of the Government of India Act, 1915 have attracted little attention and no opposition. The power of promulgating ordinances should likewise be retained (sec. 72). We also desire to recommend that the Governor-General should be given the same power as the Governor of a province to return a Bill for reconsideration. The proposal that the Governor-General should have power to dissolve either the Assembly or the Council of State has been less universally approved. The weight of opinion is in favour of the proposal, but there is considerable feeling that the power is one that should be sparingly used, and several influential bodies have urged that it should be accompanied by some provision for the summoning of a new legislature within a specified period. We have no fear that the power will be abused, but as in the case of the provincial councils if the object in view cannot be secured by making the election writs returnable by a specified date, we recommend that the power of dissolution should be accompanied by a provision requiring that a new chamber or chambers shall be summoned within a specified period.

(2) Regarding the effect of resolutions we have nothing to add to what we have already said in para. 91. The question of reserved and transferred subjects does not arise in the case of the Indian legislature, and we agree that resolutions passed by either chamber should continue to take the form of recommendations to the Governor-General in Council.

(3) Lastly there are the minor points dealt with in para. 280 of the Report which affect the putting of questions and the rules of procedure. The proposals on these points have evoked little criticism. They have been accepted by all the provincial Governments which have noticed them and Indian opinion also is generally favourable. We agree that any member of the Assembly should have the right to put a

supplementary question subject to the same conditions as we have proposed for the provincial councils, and also that the control of questions and the restrictions on resolutions should be regulated much on the same lines as in the provincial councils. We also accept the proposal that the standing orders for the Legislative Assembly and the Council of State (as distinct from the fundamental rules affecting the powers of either body) should be made in the first instance by the Governor-General in Council and that each chamber should thereafter be able to modify its own standing orders with the sanction of the Governor-General. Here again, as in the provincial legislatures, the power of closure will presumably have to be taken.

119. *Privy Council*.—Few parts of the scheme have received less attention than the proposal to institute an Indian Privy Council. Official opinion is lukewarm, and non-official opinion, both European and Indian, is mostly adverse. It is represented that no case has been made out for such an institution, and that no definite functions are proposed for it: if its only purpose is to advise, then it is regarded as unnecessary, because the two chambers of the legislature will supply all necessary advice, and even harmful, since it may hinder the work of the popular assemblies. This fear that the council may exercise an undemocratic influence and may be used in some way or other as a set-off against the legislature is plainly at the bottom of the Indian opposition. We are inclined to think that these criticisms are largely due to misunderstanding. While some of us merely see no objection to a Privy Council constituted in the manner proposed, others suggest that it would prove very useful to the Governor-General as an advisory body, on occasions such for example as the war conference held at Delhi in April 1918; and that appointment to it would in time come to be prized almost as much as appointment to His Majesty's Privy Council. Those who favour the idea of a council think that its advice might be of special value on matters involving religious issues, and that committees of the council might also do valuable work for the development of special branches of education or industry, and in other ways. We therefore support the proposal though some of us value the idea more highly than others. As doubts have been expressed upon the point it should, we think, be



made clear that members of the Council of State will of course not sit of right in the Privy Council, appointment to which would be the act of His Imperial Majesty the King Emperor of India.

120. *Standing Committees*.—We come next to the devices proposed for establishing a closer connection between the executive and the legislature in the Government of India (paras. 275 and 285). These are akin to those we have already considered in connection with the provinces. The proposal that standing committees of the Government of India should be set up has met with little opposition. We have in para. 92 stated the arguments which have been urged against the establishment of such committees. In their application to provincial committees we considered that the objections had been exaggerated, but in the case of committees of the central legislature we feel that they apply with much greater weight. There would be much more difficulty in arranging the assembly of committees in Delhi and Simla than at provincial headquarters. Delays would also be more serious and vexatious than are likely to occur in the provinces, nor in view of the nature of the business done is there the same justification for the committees as there is in the provinces. We have proposed that provincial standing committees should be constituted as a means of educating a certain number of persons in administrative methods with a view to their becoming ministers. We do not feel that this consideration has the same force in respect of the central Government. Our present purpose is to develop responsible government in the provinces, but the Government of India is to remain amenable to Parliament and there is therefore no need to introduce into it an arrangement which we can justify in the provinces only on the ground of its educative value. Committees appointed *ad hoc* are on a different footing. They have proved of value in the past and will be of value in the future, and we feel that so long as it is possible to institute such committees when occasion arises there is no need for the establishment of any system of standing committees in the legislature of India.

121. *Council Under-secretaries*.—We have accepted the suggestion that members of the provincial legislative councils should be appointed to positions analogous to that of parliamentary under-secretaries, subject to certain reservations.

But the same reasons as have influenced us in the case of the standing committees have led us to the conclusion that appointments of this nature are neither necessary nor desirable at the present stage in the Government of India. The point is not one that has attracted much attention or criticism and it is possibly not one of much importance; but we feel that it would be inadvisable to complicate the working of the Government of India in the difficult times that are before us by an arrangement which cannot be justified on strong grounds, and which might be misconstrued as an attempt to introduce by a side issue the ministerial system into the Government of India. We do not therefore propose to proceed with the proposal.

### THE SECRETARY OF STATE.

122. *Changes in control.*—We now turn to the proposals concerning the position of the Secretary of State in Council, the organisation of the India Office and the relations of the Secretary of State with Parliament. Some of these proposals affect matters which are at present the subject of enquiry by a special committee sitting in London, and in regard to these it seems unnecessary for us at the present stage to make any recommendations. On these matters, however, in which we have an indubitable interest you will no doubt afford us a full opportunity of expressing our views hereafter in the light of the committee's recommendations. For the present we will summarise briefly the opinions received by us on the various proposals of the Report, state our own tentative opinions when we can usefully do so, on points submitted to the committee, and confine our recommendations to matters which have been excluded from the scope of the committee's enquiry. The proposition is generally accepted that the Secretary of State must cease to control the administration of such subjects as Parliament consents to transfer; and we agree in the view taken by the authors of the Report that discussions on such subjects in Parliament should be governed by the fact of their transfer, but that the Secretary of State should remain free to call upon the Government of India for any information upon Indian affairs which Parliament may require. We shall develop this point in our second despatch. The delegation proposed in the reserved sphere has met with

less general approval. The suggestion is that while Parliament cannot abandon its ultimate control over the administration of reserved subjects, it should consent to facilitate the working of the reforms by authorising the Secretary of State, by rules to be placed before it, to divest himself of control over the Government of India in certain specified directions, and to empower the Government of India to do likewise in relation to the provincial Governments. Official opinion is generally favourable to such relaxation of control; non-official Indians, though they accept the principle on its financial side, are almost unanimously opposed to it in its administrative aspect. They urge that the control of the Secretary of State should be modified only in proportion as the principle of responsibility in the provincial governments and the Government of India is increased. We admit the logic of this view. We cannot recommend that the Government of India should be given a partly responsible character; and for that reason we entirely agree that there is no reason why the Secretary of State should forego his statutory right to control the Government of India whenever he thinks that his responsibilities to Parliament require that he should do so. But what we have in view is not this. Non-official opinion is probably not well informed as to the exact relations which at present subsist between the Secretary of State and the Government of India on the one hand, and the Government of India and provincial Governments on the other, and of the extent to which the provincial Governments and the Government of India are under superior control in matters of comparatively trifling importance. We feel strongly that the ultimate control of Parliament and of the Secretary of State, its agent, must be retained in regard to reserved subjects; but we are satisfied that consistently with the preservation of unquestioned powers of control, it is both possible and highly expedient to effect a considerable measure of delegation in a large number of cases. The various departments of our Government, in connection with the work of the subjects committee, have been examining the question of further delegation to provincial Governments in the reserved sphere, and we shall in dealing with the report of that committee place before you our recommendations; and if the committee which is considering the functions of the India Office agrees that some further delegation by the Secretary

of State is desirable we shall be glad to be informed as early as possible of its conclusion. As regards the special question of the relaxation by the Secretary of State of his present powers of stringent financial control we would refer to para. 58 above.

123. *India Office*.—The appointment of the India Office committee itself has been universally approved, and in some quarters there is a disposition to advocate the immediate abolition of the Council of India. The weight of articulate Indian opinion undoubtedly is to the effect that the Council is an undemocratic body which is a hindrance to progress. Some who do not press for its annihilation would like to see its membership materially reduced and the proportion of Indian members largely increased, while a popular proposal is that its place should be taken by two Indian under-secretaries of State. The suggestion that arrangements should be made for some interchange of personnel between the staff of the India Office and the public services in India has attracted less attention, but those critics who have considered the point are generally favourable. We see great advantage in securing a closer connection between the administration in India and the India Office; but upon all these important points we prefer to reserve our opinion until we have considered the conclusions arrived at by the committee on which you will doubtless consult us. The transfer of the Secretary of State's salary to the British estimates has been demanded by the Indian National Congress for many years, and the proposal on this point has therefore been acclaimed by Indian opinion. We note that this matter has been excluded from the scope of the committee's enquiry; and we desire therefore to recommend that the proposal be accepted. The transfer of other charges connected with the India Office is a more difficult and complicated question; and it is no doubt because Indian politicians generally do not appreciate the exact nature of these charges that they demand almost with one voice that all such expenditure should also be transferred to the British estimates. We must reserve our recommendations until we are in possession of the committee's report. The question of instituting a committee of Parliament to deal with Indian affairs appears to us to be primarily a matter for the consideration of Parliament itself, which can best judge how far such a body accords with its own accepted methods

of business ; for which reason we desire to offer no observations upon it except in respect of one point. The idea has been well received in India, but several provincial governments and some influential European commercial organisations also have pressed the view that the committee should be representative of both Houses of Parliament and not of the House of Commons alone. It is urged with some force that experience of India is more largely represented in the House of Lords, and that if the committee is to be as representative and as influential as possible, it should contain members of both Houses. We ourselves are inclined to agree with this view ; but content ourselves with saying that we shall welcome any arrangement which will secure a better informed and a more sustained interest in Indian affairs in Parliament.

124. *Princes and Chiefs.*—We shall not in this despatch deal with any of the questions affecting the Princes and Chiefs of India which are discussed in Chapter X of the Report, but shall address you upon these matters separately.

125. *Miscellaneous.*—Our views upon the position of the public services generally under the reforms scheme have been stated in paras. 43 to 55 above. As regards the other matters affecting them which are discussed in Chapter XI of the Report we need not now say much. The revision of the pay and conditions of service is being and has already partly been worked out, and we have laid our proposals in some cases before you and received your decisions. much remains to be done, and we would only add that it is work of detail that takes time if it is to be done properly. We are similarly engaged upon the large range of subjects connected with the Indianization of the services, and the pay and recruitment of Indians. We entirely accept the policy of instituting separate recruitment in India, and of increasing the number of Indians, in the services. We have consulted local Governments upon the suggestion made in para. 326 that public servants should be given a certain latitude in defending themselves against criticism. The report recognises that there are difficulties in the matter, and for the present we reserve our opinion. Nor need we on the present occasion refer to questions affecting the army, or to industrial questions. We enclose a report of the speech delivered by His Excellency the Viceroy at the opening of the Indian Legislative Council on February 6,

1919, in which he explained the manner in which we think that the guarantees held out in the Report to the services and to the European commercial interests should be made good. Upon the latter point therefore we need say no more. We shall bear both these points in mind in preparing our draft of the instructions to the Governor.

126. *Conclusion*—We have now completed our examination of these structural proposals. We hope to epitomise them shortly in a revised version of the summary attached to the Report, which we trust you will find convenient for purposes of reference. The picture presented in this despatch is still incomplete because we have not yet dealt with the matters arising out of the reports of Lord Southborough's committees; but to us it seemed that in dealing with a subject of so wide a range the balance of advantage lay in not attempting to cover the entire ground in a single communication. Realizing that those with whom lies the final responsibility for decisions so momentous to the Indian people will desire to have the entire material in their hands, we shall lose no time in placing before you our views about franchises and the demarcation of subjects. Our present proposals must be in a sense provisional until those have been received. But, whatever be the strength and character of the first electorates and whatever be the initial division of functions the real factors on which a decision has now to be based are, on the one hand, the conditions of India to-day and, on the other, the effect on those conditions of new powers and responsibilities. We have endeavoured to place before you the issues which will emerge from the clash of these forces; but the issues are momentous and the forces immense. We are glad to think that the final decision rests with the Parliament of Great Britain and Ireland, which will approach this weighty question with unprejudiced mind.

127. *Postscript*.—His Excellency the Viceroy has appended to this despatch a minute, not of dissent but of explanation of his personal views. Sir George Barnes, who has been compelled by ill-health to take short leave, was present at most of the discussions which led up to the decisions embodied in the despatch, and we are authorized by him to add that, if he had been present, it would have borne his signature. Our colleague Sir Sankaran Nair has recorded a note of dissent,

FIRST REFORMS DESPATCH

which we attach. Time is important and we have not discussed his arguments, although it be clear that we have fully considered and rejected them.

We have the honour to be,  
Sir,  
Your most obedient, humble Servants,

CHELMSFORD.

C C. MONRO.

C. H. A. HILL.

C. SANKARAN NAIR.

G R. LOWNDES.

W. H. VINCENT.

J. S. MESTON.

T. HOLLAND.

— —

# VIII. H. E. Lord Chelmsford's Minute, dated March 5, 1919.

I feel it right to append a minute to this despatch, not of dissent but by way of personal explanation.

In 1916 my Government forwarded a despatch to the Secretary of State framing an announcement of policy and the first steps to be taken in pursuance of the policy enunciated. The despatch was subjected to criticism—criticism which I accept as sound—that it failed to fix the enlarged Councils with responsibility. A mere increase in numbers it was said did not train Indians in self-government. It did not advance this object unless the Councils were at the same time fixed with some definite powers and with real responsibility for their actions.

It is to my mind clearly evident that such criticism was the genesis of the form of the announcement of policy made by the Secretary of State on behalf of His Majesty's Government on August 20 th. That announcement had three outstanding features. First, the progressive realisation of responsible government is given as the keynote and objective of British policy in India ; secondly, substantial steps are to be taken at once in this direction , and thirdly, this policy is to be carried out by stages. I think I shall not be stating the basic principle of this policy unfairly when I sum it up as the gradual transfer of responsibility to Indians.

The Secretary of State was deputed by His Majesty's Government to proceed to India to discuss the whole question with myself and my Government, and the results of our discussion are embodied in the joint Report which we presented to His Majesty's Government.

We took as our terms of reference the announcement of August 20th, and I confidently assert that in the proposals we have made we have not swerved from the terms of that announcement. The progressive realisation of responsible government is the basis of our proposals ; substantial steps to be taken at once in this direction are formulated , and we have provided through the machinery of the Periodic Commission for the achievement of the policy announced by successive stages.



We have not overlooked the very grave and real difficulties which lie in the path of the policy proposed. They are set out at length throughout the Report, but especially in the chapter entitled the Conditions of the Problem, and in my perusal of the criticisms of the Report I have seen no difficulties stated which we have not ourselves emphasised. As regards the proposals themselves no criticism which has been directed against them is more severe than our own statement of the case in paragraph 354 of our Report.

"As we have said already because it (the Report) contemplates transitional arrangements, it is open to the criticisms which can always be effectively directed against all such plans. Hybrid executives, limited responsibility, assemblies partly elected and partly nominated, divisions of functions, reservations, general or particular, are devices that can have no permanent abiding place. They bear on their faces their transitional character; and they can be worked only if it is clearly recognised that that is their justification and their purpose. They cannot be so devised as to be logical. They must be charged with potentialities of friction. Hope of avoiding mischief lies in facing the fact that they are temporary expedients for training purposes, and in providing that the goal is not merely kept in sight, but made attainable, not by agitation but by the operation of machinery inherent in the scheme itself."

I have quoted this passage to show that the Secretary of State and I did not shut our eyes to the very grave difficulties attendant on our scheme. But to what are these difficulties due? They are not due to any perverse ingenuity on the part of the Secretary of State and myself in the framing of our proposals. They are inherent in the principle underlying the announcement to which we were bidden to give effect, *viz.*, the gradual transfer of responsibility to Indians. And I wish here to endeavour to define what I mean by responsibility. There has been much discussion as to what is meant by responsibility, responsibility to constituents, responsibility to legislative councils and the like, and I cannot but think that there has been much talk and writing on this subject which is beside the mark, and perhaps our Report is equally guilty with others in this respect. What are we aiming at in our policy? Surely this, that the decision of certain matters—I will not discuss what matters—shall

rest with Indians ; that in these matters it will be for them to " Yes " or " No ", and that our scheme shall provide, as far as possible, for everybody knowing that the decision in any particular matter is their decision, that the " Yes " or " No " is their " Yes " or " No ". This definition of the responsibility to be attained by Indians is one to which, I believe, most people will subscribe, and I believe it to be the responsibility at which His Majesty's Government were aiming when they made their declaration of policy.

It is one thing however to enunciate a principle, it is another thing to translate the principle into practice. The Secretary of State and I have had the task imposed upon us of translating the principle of the gradual transfer of responsibility to Indians into practice. We explored every road, we followed up every path which seemed to lead to the goal we had in view, but we always came back to this,—that if responsible government is to be progressively realised through the gradual transfer of responsibility, as defined above, the only method by which this can be attained is one which involves the division of the functions of government between two different sets of authorities, a method which has been compendiously styled " dyarchy ".

In a unitary government, short of a unitary responsible government, you cannot fix responsibility upon Indians. You can associate Indians with the Government, but you cannot fix them with responsibility in the sense that any one can see at a glance that the decision in any particular case is their decision. Moreover, in a unitary government there is no room for the gradual transfer of responsibility. There is only one step from irresponsibility into the full responsibility which responsible government connotes. By the dyarchic method, however, you can insure full responsibility in certain subjects, with machinery to extend that responsibility to other subjects as occasion permits. The division of subjects between the official portion of the Government and the Indian portion of the Government insures that each portion is fixed with responsibility for its action in the sphere allotted to it. Such a division is full of difficulties as critics of our scheme have not failed to point out, but they are the price which we must be prepared to pay, if we are to translate the principle underlying the announcement of August, 1917 into practice, and make the transfer gradual.

I think I may bring out in greater relief the broad differences between the schemes of unitary government and dyarchy, if I analyse the scheme propounded by five Heads of Local Governments which is forwarded with the despatch. I welcome the scheme because it is possible from a comparison between it and the scheme of the Report to appreciate the issue between a unitary and a dyarchic government.

In paragraph 3 of the minute it is said—"While the announcement of His Majesty's Government in Parliament rightly placed the association of Indians with the Government in the foreground of the policy, the idea of association has been overshadowed and obscured by the idea of responsibility."

His Majesty's Government are the sole judges of what was meant by the announcement of August 20th. I have at the beginning of this minute discussed what I believe to be the genesis of the announcement of August 20th and what I regard as its main features and its underlying principle.

If I am wrong as to these, the foundation of the arguments in the preceding pages disappears, but I will examine the scheme of the Heads of Local Governments on the assumption that I am correct.

The main features of the scheme may be said to be—

- (1) A Council of equal numbers of officials and non-officials, the latter selected from elected members.
- (2) No division of subjects.
- (3) Legislative Council to be as in the Joint Report.
- (4) The Governor to have powers to overrule his Executive Council under section 50 of the Government of India Act, 1915.
- (5) Legislation to be as in Joint Report. Grand Committee to exist, but the Governor to have a free hand in the selection of members nominated for it and Governor to have powers of certification in the terms of section 50 mentioned above.
- (6) Budget to be voted by the Legislative Council, but Governor to have power to restore any item in terms of section 50.

It can, I think, be seen at once that the pith of the scheme lies in the constitution of the Executive and in the non-division of subjects. The other features are either those of the Joint Report or modifications of it. Can it be said that in the Unitary Executive as proposed it will be possible to fix the Indian portion of the Executive with responsibility in the sense in which I have used it in this minute, *viz.*, that it will be for them to say "Yes" or "No" in certain matters and that everybody will know that the "Yes" or "No" is their "Yes" or "No". Their position will not be different from that enjoyed by Indian Members of Executive Councils at the present moment, under which the predominance of the British element always shields the Indian Member from any direct responsibility in respect of actions of the Government. He can always point to the majority against him as responsible for the action taken.

Again, on the assumption that "the gradual transfer of responsibility" is the basic principle of the announcement, I believe that under the scheme of the Heads of Local Governments there can only be one step from a position of irresponsibility to one of full responsibility. Under this scheme advance can only be by an increase of numbers of Indians in the Executive Council and granted that the initial numbers of British and Indians are two and two, an increase of one to the Indians places them in full control. Let me quote from the minute of dissent of Lord Ronaldshay and Sir Edward Gait to the scheme under discussion. "It is true that if the scheme of the Joint Report be adopted, there will be continued agitation for an increase in the number of transferred subjects. But under the alternative scheme there will be an equally strong agitation for an increase in the number of non-official Members of the Government; and concession to that agitation would be far more dangerous, as it would involve a sudden transfer of all power from the official to the non-official members, subject to the power vested in the Governor by section 50 of the Government of India Act, which however he could exercise only on very special occasion."

It still remains for me to examine the position of the Legislative Councils under this scheme. The Heads of Local Governments rely on the machinery of the Grand Committee and the use of the certificate to carry their affirmative legisla-

tion. In so far as they find themselves able to use this machinery in the whole domain of government, they will reduce the Councils merely to bodies of irresponsible critics to whom no power is given, in whom no responsibility is fixed, but whose numbers are materially increased. In so far as they do not use the machinery they will reproduce the position of Canada described in the Durham Report—an irremovable executive and an irresponsible but supreme legislature. It might be said that this same argument recoils on my head in respect of our treatment of reserved subjects. But to this objection I would point out that we have advisedly not introduced the principle of responsibility into that sphere while in the sphere of the transferred subjects the principle has full play.

The potentialities of friction, which are predicated for the dyarchic scheme, will thus, to my mind, be equal if not greater in their proposals and the saving grace of responsibility will find no place.

One more,—I have seen schemes under which a combination of division of subjects with a unitary executive is proposed, I would ask those who suggest such schemes to test them by the two principles, which I understand are basic in the announcement, of fixation of responsibility and of gradual transfer of responsibility. I do not believe they will survive the test. But let me state the problem in another way. The division of subjects is incompatible with Unitary Government. The moment you divide subjects you necessarily divide the Government, otherwise there is no meaning in the division. You divide subjects in order to allocate those which are to be under the control of the Legislative Councils to Members of the Government who would owe allegiance to the Councils. By division of subjects then you at once introduce dualism into the Government, and have two portions of one Government owing allegiance to different authorities.

I have confined myself in this minute to the one point whether or not the advance is to be by way of the gradual transfer of responsibility. This to my mind must be settled before it is profitable to discuss the details of the proposals. I have traced the history of the promulgation of this principle. It is for His Majesty's Government to decide whether I have traced it aright and whether I have correctly interpre-

ted their announcement of August 20th. The idea of responsibility was, as I believe, introduced into that announcement deliberately and I have endeavoured loyally to carry it out in the proposals for which the Secretary of State and I were jointly responsible. I leave it then for the decision of His Majesty's Government, but I earnestly press upon them the imperative necessity of action in fulfilment of their announcement. I agree with the opinion expressed by His Excellency the Governor of Bombay, in a note written to me in connection with the Conference of Heads of Provinces, that "time is a factor of vital importance in the consideration of the whole question of Reforms," "I am convinced," he says, "that delay is a greater danger even than an imperfect scheme, and that those of us on whom must fall the heavy burden of putting the reforms schemes into actual operation will be better able to work an imperfect scheme with the goodwill and confidence of all concerned than to operate a more perfect scheme—if one can be devised—when confidence and good-will have been broken and alienated by disappointment and delay."

One last word.—The Secretary of State and I asked for publication of our Report because, as we said, "our proposals can only benefit by reasoned criticism both in England and India, official and non-official alike." That criticism, so far as India is concerned, has been received and along with my colleagues in the Government of India I have carefully weighed it. The results of our consideration are embodied in the amendments suggested by us in our despatch. We have not departed from the underlying principles of the Report, and I believe that we have done much to clarify and strengthen the proposals as a practical scheme.

CHELMSFORD.

## **IX. Minute of Dissent by Sir C. Sankaran Nair, dated March 5, 1919,**

I. The policy of His Majesty's Government has been announced to be "the progressive realization of responsible government in India as an integral part of the British Empire." Some critics are apparently of opinion that this means the complete, though gradual, transfer of control from Parliament to legislatures in India. The words that India should be "an integral part of the British Empire" appear to me to forbid such an interpretation. As long as India remains an integral part of the British Empire, the paramountcy of Parliament must be recognised and maintained. Limitations may possibly be placed upon the exercise of the powers of Parliament by practice and well-understood conventions. In fact 'the control of Parliament' may have one meaning in certain colonies and another meaning elsewhere. But the legal right of Parliament at any time to interfere with the Government of India must, for various reasons which it is unnecessary here to enumerate, be beyond doubt. What in my opinion "responsibility" implies is the subordination of the executive to the legislative council composed of the representatives of the people. For the purpose, it makes no difference whether they are governments nominated by the legislative council or not. The essential point is that they must carry out the will of the legislature in every respect.

The proposals made by my colleagues tend to the diminution of Parliamentary control not for the purpose of transference of such power to the legislative councils of the country, but to the executive governments in India. What the Indians desire is not that Parliament should surrender in favour of the executive governments its power of control, but that it should delegate it to popular assemblies in India when it should think it proper to do so. During the period of transition, Parliament or any authority in England which faithfully represents Parliament might interfere with the exercise of any delegated authority by the legislative assemblies in India at the instance of the executive authorities or otherwise. I do not think that well-informed moderate Indian opinion will raise any objection

to a real intelligent control by Parliament in Indian affairs. So far as I know, they rather invite it. This difference of opinion will be found to explain a great deal of the differences between many of the proposals put forward respectively by the Government of India and by the Congress Party. The India Office, with the Secretary of State, as at present constituted, does not faithfully represent Parliament.

2. Another criticism in opposition to this announcement and the steps proposed to be taken under it is, that it is hopeless to introduce into India a government responsible to the people of the country, as any system of government other than that of absolute monarchy was unknown in India and is entirely foreign and repugnant to the genius of the people. Those who advance this objection apparently ignore the influence of education, environment, association, political evolution, time spirit, etc. Besides as a matter of fact non-monarchical forms of government are not foreign to the genius of the people. I shall confine myself to the testimony of European writers. According to Professor Rhys Davids "the earliest Buddhist records reveal the survival, side by side with more or less powerful monarchies, of republics with either complete or modified independence." He also says: "The administrative and judicial business of the clan was carried out in public assembly at which young and old were alike present in their common Mote Hall at Kapilavastu. A single chief—how and for what period chosen we do not know—was elected an office-bearer, presiding over the sessions, and if no sessions were sitting, over the State. He bore the title of Raja, which must have meant something like the Roman Consul or the Greek Archon." The Greek writers refer to tribes who dwelt "in cities in which the democratic form of government prevailed" (Ancient India, Alexander's Invasion, McCrindle, page 292). There is also a reference to another tribe "where the form of government was democratic and not regal." Various other tribes who opposed Alexander are referred to as living under a democratic form of government (see Arrian Anabasis : McCrindle, page 154). Diadoros speaks of a Patala as a city "with a political constitution drawn on the same lines as the Spartan; for in this community the command in war is vested in two hereditary kings of two different houses, while a Council of Elders rules the whole



State with paramount authority.”\* The latest authority that I know of on the subject is Mr. Havell.† He says: “The common belief of Europe that Indian monarchy was always an irresponsible and arbitrary despotism is, so far as concerns the pre-Muhammadan period only one of the many false conceptions of Indian history held by Europeans.” “It will be a surprise to many readers to discover that the mother of the Western Parliaments had an Aryan relative in India, showing a strong family likeness, before the sixth century B. C. and that her descendants were a great power in the state at the time of the Norman conquest.” (a) “The liberty of the Englishman was wrung from unwilling rulers by bitter struggles and by civil war. India’s Aryan constitution was a free gift of the intellectual to the people; it was designed not in the interests of one class, but to secure for all classes as full a measure of liberty and of spiritual and material possessions as their respective capacities and consideration for the common weal permitted.” Megasthenes refers to the assemblies in Southern India also controlling and even deposing kings. How long these forms of government subsisted, it is now not easy to say. It certainly prevailed on the West Coast of India among the Nairs at the time of the Portuguese invasion. The Portuguese writer speaks of the “Parliament” which controlled the Kings (cited in Logan’s District Manual of Malabar). The Jirgahs on the North-West of India which in the British territories now consist of the nominees of the Deputy Commissioner or Commissioner are the representatives of the old tribal assemblies which settled questions of war and peace and other important questions of government. Across the frontier the Jirgahs still exercise in some places those rights. The political conditions in India were not favourable for the survival of democratic institutions. That the spirit of popular government had not died when the British Government took possession of the country is however clear.

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\* I omit all references to the Vedas, Mahabharata and the other Indian including Buddhistic authorities which are all referred to, along with what I have cited above, in two forthcoming works by K. P. Jayaswal and Dr. Bhandarkar respectively which will be shortly issued by the Calcutta University; and some of them also by Pramathanath Banerjee in his “Public Administration in Ancient India.”

† E. B. Havell. “The History of Aryan Rule in India” Harrap & Company (1918). (a) Intro. XIII.

3. It can scarcely be denied that in the ordinary villages a democratic form of government prevailed when the British took possession of the country. "Neither ancient nor modern history in Europe can show a system of local self-government more scientifically planned, nor one which provided more effective safeguards against abuses, than that which was worked out by Aryan philosophers as the social and political basis of Indo-Aryan religion."\* The Fifth Report of the Select Committee of the House of Commons accurately describes how the village republics had survived invasions, convulsions and monarchy after monarchy. On this question Sleeman's *Travels* and Max Muller's 'What India can teach us' may be referred to. These village assemblies administered justice—both civil and criminal. The supreme government dealt with them and not with the inhabitants of the villages. They apportioned the revenue or tax among the inhabitants. They owned the public lands, and not the government. They consisted of elected members. We have got the election rules, containing the qualifications, disqualifications, etc., in detail of the electors of long long ago preserved in inscriptions.† But they were incompatible with the revenue system of the British Government and with their administration of civil and criminal justice. The old village officials were converted by our government into government servants and became, according to popular view, government tyrants. The village entity was not recognised and in some provinces was destroyed by legislation. The common lands became government lands. The so-called village organisations which are the creation of British legislation or administration bear no resemblance to the ancient assemblies. It is impossible for any one who has even cursorily studied the history of village assemblies to maintain that the spirit of popular government has died out among the people.

4. Every Indian lawyer knows the caste assemblies which settle caste disputes often involving ownership to properties of great value. The argument from administration of justice also seems to be a conclusive answer to those who

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\* E. B. Havell "The History of Aryan Rule in India" Harrap & Company (1818).

† See *Ancient India* by S. Krishnaswami Aiyangar, with an introduction by Vincent A. Smith, page 169.

maintain absolutism as an essential feature of Indian polity. We now administer the Hindu laws of inheritance and certain other laws which are inseparably bound with the law of inheritance. Yet they are not laws which, so far as we know, had the sanction of any sovereign. They were framed by great law-givers, not kings, and those laws were applied by caste or village assemblies to cases of individuals that came up before them. It is not right to say that any system other than that of absolute monarchy is repugnant to Hindu genius.

5. Besides, apart from the ideas and traditions which Indians have inherited with their respective civilizations, they have also imbibed the ideas of representative institutions under British Rule. For the last thirty-five years they have been more or less familiarized with elected or representative Municipal Boards and District and Taluq Boards, Congresses and Conferences. They have been praying for the introduction of representative Legislative Councils. And there is no form of Government which appeals more to the thoughtful among Indians to-day than a Government where the representatives of the people would sit to decide questions which affect the people.

It is important to note the growth of Indian public opinion on this question in order to judge what measures of reform are needed in the present condition of India and what are likely to satisfy that opinion.

My colleagues have not attached due weight to these considerations and have accordingly proposed various modifications which would make the Reforms Report scheme inconsistent with the announcement of the 20th August and utterly inadequate to meet the needs of the situation. To show this, I shall first state the proposals in the Reforms Report, and before dealing with the modifications proposed by my colleagues, draw attention to the conditions of the problem as they have developed during the last thirty years, which, in my opinion, have not received due consideration.

#### THE SCHEME—THE GOVERNMENT IN THE PROVINCES.

6. The proposals in the Report may be divided into three broad divisions (1) Certain departments of government, say local self-government, etc., are to be placed under the control

of Indian "Ministers" who will be responsible to legislative councils in the provinces composed of a large majority of members elected by the people and therefore entitled to be called themselves their representatives. Those departments are to be administered by the Minister under the general supervision of the Governor of the Province.

(2) Other departments, which will consist of what are called "Reserved" subjects are to be administered by an Executive Council composed of one official, preferably an English Civilian, and one Indian appointed on the recommendation of the Governor. The Minister and the Legislative Council are to exercise considerable influence in the administration of the "Reserved" subjects as the entire body consisting of the Executive Council and the Ministers are to form one united government deliberating jointly in all important matters, though the decisions are to be taken only by the executive authorities in each department; there is to be only one common budget for both in the settlement of which, in cases of differences of opinion between the Minister and the Executive Council, the Governor is to have the deciding voice. The budget so settled may be modified by the Legislative Council in any way they like, subject to the power of the Governor to restore any provision in the budget which he might think it necessary to do in the interests of the "Reserved" subjects. And finally no taxation in any instance is to be imposed without the consent of the Minister. It will thus be seen that these provisions give the Minister and the Legislative Council considerable influence in the administration of the reserved subjects; and the Executive Council is thus, though indirectly, made amenable to the influence of the Legislative Council in various important respects. In view of what I consider the retrograde proposals which are now being put forward by the Government of India, these proposals about reserved subjects are very important. Periodical enquiries are to be made by Parliamentary Commission for the purpose of removing subjects from the "Reserved" list into the "Transferred" list. The success of the Minister and of the Legislative Council in dealing with transferred subjects might not in itself constitute an adequate ground for the transfer of any of the reserved subjects which would ordinarily be of a very different kind. It is only the nature of the advice offered by the Minister and the Council and the influence brought by them

to bear upon matters relating to the reserved subjects that would furnish the Commission with satisfactory reasons for their fitness for administering subjects so far withheld from them. These provisions, therefore, as to unity of government—the influence of the Minister and the legislature over the reserved subjects—form an essential part of the scheme of the Reforms Report. From the Indian point of view, their importance is still greater. The reserved subjects will naturally consist of various and important subjects in which great administrative and other improvements, according to public opinion, are necessary. These provisions will enable the Legislative Council and the Minister to insist upon the various necessary and beneficial reforms, with the result that if those reforms are not carried out, the Commission of Enquiry will be able to hold the executive council responsible for the short-comings of the administration and will feel justified accordingly in transferring the government of those subjects to the Minister and the Legislative Council.

(3) There is a third class of subjects which are under the control of the Government of India, who are to be responsible only to Parliament. They have no responsibility in any sense to the Legislative Council, but the Indian element is to be materially increased both in the Executive and the Legislative Councils so that they might materially influence the decisions of the India Government.

It is also a feature of the report that the Government of India are to retain within their control as few subjects as possible, *i.e.*, those which are necessary for peace, order and good government of the country. Therefore as large a devolution to the provincial governments as is compatible with this obligation of the Government of India is to be carried out. It will be seen that this follows necessarily from one of the main conditions of the problem *i.e.*, that under the existing system reforms are difficult, if not impossible.

7. I accept these principles and also generally the scheme in so far as it refers to the provinces. I shall have to suggest a few modifications but they will be strictly consistent with these principles and in fact are only intended to carry them out a little further in their application to the provincial Governments, but as will be shown presently my colleagues have

considerably modified the scheme. According to the scheme as modified by them there is really no responsibility left so far as the transferred departments are concerned, and so far as reserved departments are concerned the influence of the Minister and the Legislative Councils has been eliminated. The justification for their proposals is the assumption made by them, that those to whom powers would be transferred according to the scheme are an oligarchy who may use them to the detriment of the masses, that the demand for reform emanates only from a small and comparatively insignificant class, that political progress will be accompanied with loss of efficiency and that the administration which has hitherto been conducted according to British standards and ideals will gradually acquire what is called an Indian character. In the reforms report also there are indications that these views may have influenced its authors in restricting the scope of reforms. With reference to this the following facts have to be borne in mind.

8. The Indian National Congress was started in the year 1885 to divest the Government of India if possible of its autocratic character and to make it conform to English standards and ideals. For this purpose it was hoped that the representation of grievances to the Indian and the British Government by themselves and by elected members in the Legislative Councils would secure their redress. The first Congress demanded an enquiry into the working of the Indian administration on account of the deterioration of the condition of the people. The second Congress which met at Calcutta in 1886 and which was really the first Congress composed of delegates from the various parts of India, after passing a resolution of congratulations to her Majesty, passed the following resolution :—

“That this Congress regards with the deepest sympathy and views with grave apprehension the increasing poverty of vast numbers of the population of India, and (although aware that the Government is not overlooking this matter and is contemplating certain palliatives) desires to record its fixed conviction that the introduction of representative institutions will prove one of the most important practical steps towards the amelioration of the condition of the people.”

It will be observed that representative institutions were demanded in order to deal effectively with the increasing poverty of India. It is also remarkable that many amendments were proposed putting forth palliatives for the poverty of the masses like the permanent settlement, wider employment of Indians, encouragement of indigenous trade, etc., but they were all rejected, and the above-mentioned resolution was carried.

The official report of the third Congress recorded that, "the Indian community despair of obtaining any material alleviation of the misery they see around them, until they can secure a potential voice in the administration." And it was added.—"It is this conviction, more than anything else, that is giving such an intense earnestness to their efforts in the direction of representation." Accordingly, when General Booth of the Salvation Army, commending "to the attention of Congress the claims of the millions of India's starving poor," suggested certain schemes, the seventh Indian National Congress passed a formal resolution that the relief of the millions of half-starving paupers, whose sad condition constitutes the primary *raison d'être* of the Congress, cannot be secured by any palliatives, and said, "it is only by modifying the adverse conditions out of which this widespread misery arises, and by raising the moral standard of the people, that any real relief is possible. As regards the first, the Congress programme now embodies all primarily essential reforms; as regards the second, in every province and in every caste, associations, public or private, are working with a yearly increasing earnestness."

9. Among the reforms which the Congress from that time up to the present have been pressing are compulsory primary education in the interests of the masses, technical education for industrial development, local self-government, mainly in the interest of sanitation, etc., separation of judicial and executive functions for better administration of justice, reform of the land revenue system, abandonment of the theory that land forms the private property of the Crown to be dealt with by the executive at its pleasure and the recognition of national ownership of land by bringing what are called the Revenue settlements under the control of representative Legislative Councils, a far larger admission of Indians into the public services without racial distinction. These are some of

the most important of the reforms which have been put forward.

These and other reforms were pressed upon the attention of Government by Indians whose capacity was undoubted, who subsequently rose high in Government services and with ability which left nothing to be desired. There was agitation not only on the Congress platform but elsewhere also. Subsequently in the Legislative Councils the elected members continued the process but all this was scarcely of any avail. The result on the other hand was a stiffening of the Civil Service opposition to Indian progress mainly on the ground that English ideals are not suited to India. Gokhale said that unanimity in expressions of good-will, various proposals of reform by individuals, general opposition to every particular proposal, indifference, if not refusal, to carry out the clear intentions and orders of the British Nation have characterised the attitude of the Civil Service. The Indian politician who has taken any part in Indian public life or who has any experience of the real government of the country, came to the conclusion that under the Indian Civil Service who form and carry on the real Government, no real progress which in the present circumstances of the country is indispensable, can be expected. The result on the part of the constitutionalists is a demand for reforms of the character now put forward. The grievances due to the alleged mis-government and the apparent hopelessness of their redress under the existing conditions are responsible for sedition and revolutionary movement ; latterly, the natural desire for self-Government and the forces that have been let loose since the war have reinforced the claim for reform. This general demand had not its origin, as stated in the Reforms Report, solely or mainly in the desire, however natural, of the English educated Indians for an increasing share in the administration or for self-Government, though no doubt there were a few advanced thinkers who might have put forward Home Rule even thirty years ago. Reform was at first regarded simply as a means to improved administration according to English ideals and is even now so held by a considerable section. Matters have now, however, assumed a different aspect and the association of Indians in every branch of Government and self-Government are regarded as an end in itself and the only panacea for the evils complained of.



10. The opponents of this movement maintained that the Congress was started by the Bengalis and the Brahmmins of South India, and that India as a whole was not with them. The Mahrathas were invited to declare that they had nothing to do with these Bengali and South Indian agitators. We know now the answer. The Mahomedans were warned that the Government might tolerate the agitation carried on by certain classes, but they, the Mahomedans will not meet with the same tolerant reception. No efforts were spared to inform them that the Congress was hostile to them. The exigencies of controversy alone can now represent the attitude of the Mahomedans as hostile to reforms. Indeed their advanced section asks for reforms more far-reaching than any that the Hindus claim. Anti-Congress politicians were certain that the races like the Sikhs and other Punjabis at least are bound to be opposed to Home Rule. It is doubtful now whether there are stronger adherents to Home Rule than those in the Punjab. At the last Congress in Delhi it was the determined attitude of the Punjabis that forced the Congress to demand reforms far in excess of those in the Reforms Report. The Non-Brahmins and the Depressed Classes have awakened to a sense of their political helplessness and to their wretched condition, and no longer content to rely upon the Government which has left them in this condition for the past hundred years, claim a powerful voice, in the determination of their future. It is enough to say that they want half the Members of all the Executive Councils, including the Viceroy's, to be Indians, and an elected majority in all the Legislative Councils, without the checks provided by the Grand Committees and State Councils, their interests being adequately protected by what is called communal representation. The demands for a large measure of reform varying from Home Rule to the demands of the depressed classes as stated above have now become general.

11. After the Mutiny, Sir Sayyad Ahmad pointed out that it was absolute ignorance on the part of the Englishmen of the real condition of the country that was responsible for the Mutiny, and he advocated the appointment of Indian members to the Legislative Councils to give the English rulers information of the needs of the country. The men nominated by the Government proved utterly useless for the purpose. Nomination was found to be an absolute failure. The Congress then claimed a representative element in the Legislative

Councils in the hope that if the authorities were kept well-informed by the authorised representatives of the nation, the condition of the masses of the country would be vastly improved. Lord Lansdowne introduced an elected element into the councils, but there was no real improvement. All their efforts for more than fifteen years proved abortive. They were told that they did not know the conditions of the country themselves ; that the officials knew better ; and against their strong protests measures were enacted and a line of conduct pursued which led to the growth of sedition in the country. Lord Morley then enlarged the Legislative Councils to provide real representation of the various classes of the people so that the same reproach might no more be levelled that the Councils did not represent the real voice of the nation. He provided for resolutions to be moved in the council so that the Indians might be able to formulate their views for the consideration of the officials, and the officials might be enabled to give their reasons in reply. He also provided, what is equally important, for the appointment of Indians to the Executive Councils so that they might press acceptance of the popular views upon their colleagues. This experiment has been tried also for a sufficiently long time only to prove its futility ; and not only the Congress and popular leaders of the country but all thinking men in India have come to the conclusion that the existing machinery is insufficient for the peaceful and good governance of the country.

The Reforms Report, therefore, is not only quite right in dwelling upon the political consciousness of the people quickened by the recent events in Europe which demand great political reforms, but it has minimised very much the intensity and volume of that political consciousness. The Report is also quite right in pointing out the growing discontent and the widening gulf between the officials and the non-officials due to the inutility of the Legislative Councils. I think, however, that it has not brought out sufficiently that this is due to the official attitude. I have not thought it necessary to dwell upon the other reason which has been assigned for reform that it is extremely difficult, if not impossible, to initiate or to carry out any progressive policy under the present constitution of the governments in India which has been explained in detail in the Report, as this is generally admitted to be the case.

12. I have referred to the reasons for reform which have been advanced in the Report and they make out a case for a great change, but in the opinion of the political leaders reform is imperative for another reason. It is required in the interests of peace, order and good government, *i.e.*, efficient government according to English ideals. The present system has proved inefficient. The plague disturbances in the Bombay Presidency would not have been allowed to take place under any democratic or popular government. The Tinnevely riots and the murder of Mr. Ashe in the Madras Presidency were due to the latter's interference with Chidambaram Pillai's efforts to improve the lot of the millhands and with the Swadeshi Steam Navigation Company. This again would not have been possible under the ordinary conditions of good government. The occurrences in East Bengal which were the immediate cause of seditious and revolutionary movements also would have been practically impossible under a popular government. The Punjab unrest in 1907 had its origin in a legislative measure which was vetoed by the Imperial Government on account of the opposition of the sepoys and the military classes. The bills now before the Legislative Council to deprive a person of the protection of the ordinary courts of law and of the safe-guards which, in civilized countries, have been found necessary to protect the innocent, and to place personal liberty, freedom of the press and speech under the control of the executive, is proof of the necessity of radical reform of a system responsible for a situation which has, in the opinion of Government, rendered such legislation necessary.

The troubles consequent upon the division of society by races, castes and creeds, far from being any impediment in the way of reform, calls imperatively for great political reforms; and there is very good reason to believe that if the leaders of the various communities are left to compose the differences themselves, such conflicts will be far rarer, if they will not entirely disappear.

Great constitutional reforms are also essential in the interests of the masses of this country. The educated classes have failed in their endeavours to bring about any substantial amelioration in their condition. Not only have the Government not taken the necessary steps, but they have not supported the efforts of the educated classes.

Further, the various reforms that are long overdue also call for a change in the constitution that would render their realization probable. Promises made as regards the admission of Indians into the public services without racial distinctions have not been kept. Reforms in the land revenue administration which are indispensable were promised by the Government, and the promise has been withdrawn. The separation of judicial and executive functions was promised by the Government of India. It has not yet been effected. The orders of Lord Ripon and of Lord Morley about local self-government have been practically disregarded. The wishes of the King-Emperor as regards education have not been carried out. Steps necessary for the revival of industries have not been taken. In all these we have now passed beyond the stage of promise and without actual performance no weight would be given to our declarations.

It is under these conditions that the Congress and the Muslim League and the non-official representatives of the Legislative Council formulated their demands for representative legislative councils, for responsible government by the subordination of the executive to such councils and for a far larger infusion of the Indian element into the executive councils so that the latter might not be in a position to entirely disregard the popular demand, and it was in reply to this demand that the British Government have promised self-government by instalments, substantial steps being taken at once to carry out that promise.

Thus, it is not true that the reforms advocated will result in the transference of powers to persons who are not interested in the welfare of the masses; and it is also quite feasible to transfer power to the masses themselves. The demand for reforms is universal, and such reforms will only result in the application of the British standards and ideals to the Governments in India. With reference to the official view, that they best understand and protect the interests of the masses and that the transfer of power to the educated classes may result to the detriment of the masses, I would draw attention to the recent events in Champaran and Kaira, see appendix (A). They are also instructive for other reasons.

Bearing all this in mind, I proceed to consider the modifications suggested.

## TRANSFERRED DEPARTMENTS.

13. First, to deal with the "transferred" subjects, *i.e.*, the subjects which are presumed to be under the control of the Ministers and the Legislative Councils. According to the Reforms Report, though a Governor does not occupy from the outset the position of a purely constitutional Governor, he is to refuse his assent only when the consequence of acquiescence would clearly be serious. I am not sure whether this is accepted by my colleagues (para. 101). If it is not, and if they contemplate any further interference on the part of the Governor, I am unable to agree with them. The new proposals which they have made seem to contemplate such interference. I have no doubt it will be admitted that the Ministers and the Councils will not be able to carry on the administration with any fair degree of success unless they have a loyal service or services which, in their opinion, are competent to carry out the duties which are entrusted to them. Of course at the commencement, as rightly pointed out in the Report, to require Ministers to inaugurate their services for their own departments would doom the experiment to failure; and the Reforms Report therefore places the machinery of the public service, as it exists to-day, at the disposal of Ministers, adding also that adequate protection must be given to those services. The Government of India now give adequate protection to those services by various provisions to which it is unnecessary here to draw attention. But instead of only placing the public service at the disposal of the Ministers when the new scheme is inaugurated, they would go further and would compel the Minister to accept such officials to carry out their policy. The consequence would be that though the Minister may be saddled with an officer who is so opposed to the opinions of the Minister and of the Legislative Council that he will not loyally carry out the policy determined upon by them, the Minister is to be compelled to retain him although both the Governor and the Minister may want to get rid of him and appoint another person who they think would properly carry it out. Thus, for instance, if the Governor and the Minister want to appoint a sanitary expert from England for carrying out certain sanitary arrangements, they are not to have that liberty, but they will be compelled to appoint a man in

the ordinary services. Similarly, if the Governor and the Minister wish to appoint an agricultural expert as the head of certain settlement or agricultural operations in preference to the Civil Service officer who will be ordinarily appointed to it under the rules of the service, they are not to have that right, but they will be compelled to accept a person who would in the ordinary course occupy that position.

We have provided that the appointments of these officers can only be made by or with the sanction of the Secretary of State and subject to any rules that may be made by him. I would, therefore, propose that it should be open to a minister to appoint, with the sanction of the Secretary of State, or request the Secretary of State to appoint any person outside the service for any post under him. The intervention of the Secretary of State should be a sufficient safeguard in such cases.

14. This question becomes of very great importance when we regard their relations with the Governor. According to my colleagues, the permanent heads of departments and the secretaries under a minister should have access to the Governor to bring to his notice any case which they consider that the Governor should see. In fact, the secretary or the permanent head of a department would be entitled to appeal to the Governor against any decision of the minister overruling him. My colleagues also expect that the Governor would direct all cases of particular types and all cases of major importance to be brought to him as a regular practice. The result would naturally be to weaken considerably the position of the minister in relation to his subordinates. In fact, he might be reduced to a figure-head by the Governor and the Secretary. I do not think that this could have been contemplated by the authors of the Reforms Report, and I do not think it right. No secretary or head of a department should have any access to the Governor for this purpose. No one should come between him and the minister. It is one thing for a Governor to tell the member himself that he would like to be consulted on cases of a certain type, and it is a very different thing to allow a secretary to bring to him such cases for decision in appeal against a minister.

15. There is another drastic change proposed by my colleagues. They are of opinion that if any proposal con-

tained in a bill dealing with transferred subjects affects the peace, tranquillity, etc., of a province, or the interests of a specified reserved subject, the Governor should have a right to refer that bill to a grand committee. In actual practice this might practically eliminate the control of the legislative council over even the transferred subjects ; because almost all bills referring to transferred subjects may be brought by a Governor, whose order according to my colleagues should not be open to appeal, under one or other of these conditions. To take a concrete instance : If a minister wishes to introduce any measure dealing with sanitation or education, the Governor might refer it to a grand committee on the ground that its alleged unpopularity might possibly provoke disorder. We may, therefore, assume that the legislative councils will in law be as impotent in future in transferred departments as hitherto, and as they will be in the reserved departments in the future. This is opposed to the Reforms Report and I am unable to accept it.

16. Further my colleagues would give power to the Governor and the Secretary of State in certain events to transfer *all* departments from the minister to the Executive Council. It will be noticed that the Governor has the power to dismiss the minister, he has the power to dissolve the legislative council ; but even after this if he finds the legislative councils and all ministers opposed to him, they would give this right of transfer of *every* department from the minister presuming that the Governor must be right and all the councils wrong. They want this as the only possible safeguard against a deadlock, which might be fatal to the administration of a province, as a deterrent to factious and irresponsible action ; this view is based upon a gratuitous assumption that actions of the legislative councils and the minister will always be factious and irresponsible when such actions are opposed to the opinion of the Governor.

I do not think it should be in the power of a Governor or the Secretary of State who will be only his mouthpiece—to strike thus at the root of the reform scheme. This proposal is entirely opposed both to the letter and spirit of the Reforms Report, which views such proposals with disfavour ; the Report would not give such power over the legislature to any executive government and would allow the same, if at all, only after an open enquiry by an impartial

parliamentary commission. If two consecutive legislative councils, composed as they would be under the scheme, came to conclusions directly opposed to that of the Governor, the presumption, in my opinion, would be exceedingly strong that the Governor was wrong and their views should be given effect to. To give, in such circumstances, this power is to go against the principles of constitutional government and will be taken as indicative of a spirit incompatible with constitutional government. For any sudden emergencies, there is the power of ordinances, if necessary, by the Viceroy. I would not, therefore, allow this power more especially when it is proposed to confer upon the Government of India certain powers of interference, the exercise of which would adequately meet all possible contingencies.

17. It is proposed to give the Government of India the power of interference even in the case of transferred subjects for the following purposes —

- (i) to safeguard the administration of Government of India subjects ;
- (ii) to secure uniformity of legislation where such legislation is considered desirable in the interests of India or of more than one province ;
- (iii) to safeguard the public services to an extent which will be further determined subsequently ;
- (iv) to decide questions which affect more than one province.

18. Again, my colleagues propose that if the decision taken in the reserved department requires, in the opinion of the Governor, certain action in the transferred department which the minister objects to take, the Governor must be armed with the power to issue orders in the transferred department. It makes no difference in this view that the Governor can pass an order in similar circumstances in the reserved department. The result of this will be further to curtail the powers of the minister.

19. The new proposal about the allocation of the resources available for the purposes of the executive council and those available for the purposes of ministers completes the subordination of the ministers to the executive council. The main sources of revenues, like the land revenue, in the pro-



vinces will be under the control of the executive council while all the departments of expenditure, like education, local self-government, including public health and public works, will be under the control of the ministers. These are the departments which stand in need of development. In normal circumstances therefore the revenue which they require will have to be made good to them by the executive council. This places the ministers practically under the control of the executive council. The minister or ministers will not be able to raise money even by taxation without the consent of the Governor, and, as I have already pointed out, it will almost invariably be the case that the bill is one which the Governor would be entitled to refer to the committee for legislation. According to my colleagues their proposal will give the ministers a direct interest in improving the sources of revenue which are placed in their charge, but the sources of revenue which are capable of expansion will be, according to the proposals, placed not in their charge but in the charge of the executive council. There will be therefore no resources to be developed except perhaps excise revenue which it should not be our policy to regard as a source of growing revenue. Further I do not accept this theory that all inducement must be held out to a department to increase its revenue for its own benefit. My colleagues further state that the official government should not have the power to refuse funds for the work of the popular half of the government, but according to the proposals the minister will never have that power as the final decision for taxation rests with the Governor and not with the minister. I do not accept the view which seems to result from the proposals of my colleagues that we should punish the people of the country for any dereliction of duty on the part of the minister or the executive council.

20. The cumulative effect of all these provisions is to place the minister and the legislative council in relation to transferred departments not only in a position of no real responsibility but virtually in subordination to the executive council. The scheme, therefore, of my colleagues is directly against the announcement of the 20th August, as it means altogether a negation of responsibility, and should not therefore be accepted. The departments of which the minister will be placed in charge are bound to suffer under the proposed arrangement ; and I have shown in my review of the present

situation that they are not likely to receive any favourable treatment at the hands of the executive council.

In so far as this part of the scheme is concerned, my criticism therefore is that while the policy decided upon by His Majesty's Government requires definite responsibility to be laid upon the ministers for certain acts of the government, the Secretary of State and the Viceroy would allow such responsibility only under the general supervision of the Governor; my colleagues would practically get rid of all such responsibility by converting the minister into a subordinate executive officer, and the real legislative council into a subordinate body—subordinate to the Governor and the executive council, the latter being without any responsibility for the consequences,—though my colleagues in terms disclaim any intention to create an inferior government under the superior provincial Government.

#### “RESERVED” SUBJECTS.

21. I shall now take up the question of “reserved” subjects. I have already referred to the provisions of the scheme relating to reserved subjects, which show the nature and the influence or power which might be exercised by the minister and the legislative councils (see paragraph 6). The subject is so very important that even at the risk of prolixity or repetition I take the liberty of referring to them again for the purpose of explaining the objections that I advance to the proposals which are now being formulated by my colleagues.

According to the Reforms Report, no taxation, when it becomes necessary even in the interests of reserved subjects, can be imposed in a province without the consent of the minister who is supposed to represent the legislative council. The first essential, therefore, of a popular government is thereby secured. Again, the entire budget, both for the transferred subjects and for the reserved subjects, is to be settled by the executive government as a whole. The minister has, thus, a powerful voice in the settlement of the budget, he is not a mere outsider tendering advice which may be acted upon or not according to the will of the executive council, because unless he is in a position to justify the budget proposals, even as regards the reserved subjects, he will not either undertake new legislation or be able to persuade the legislative council. At the same time he will not have a controlling voice so far as

reserved subjects are concerned, because a final decision is to be taken by the executive council alone. Furthermore, even as to reserved subjects, in cases of any disputes between the minister and the executive council with reference to any provision of the budget, the question has to be decided by the Governor, who is also responsible for transferred subjects and who is to act in view of the fact that taxation, if any, can be undertaken only with the consent of the minister. The influence of the minister in these circumstances, will act on the reserved subjects in the direction of thrift and retrenchment. Similarly, the minister will have the experience and advice of the members of the executive council with reference to his transferred subjects, and he will have to pay serious regard to that advice in determining the relative proportions to be divided among the transferred and reserved subjects; and the influence of the executive council members will therefore be exercised in the direction of thrift and expenditure so far as transferred subjects are concerned. Then, again, this is a very important provision: the entire budget has to be submitted to the legislative council, whose resolutions on the budget, will be binding even so far as the reserved subjects are concerned, unless the Governor restores the budget on specific grounds (paragraphs 221, 222, 256 and 257).

The proposals that I have referred to above give the minister and the legislative councils very considerable influence in the most important question of finance and everything that depends on it concerning the reserved subjects. They are satisfactory and based on sound principles. All this influence or power proposed to be bestowed upon them in the Reforms Report will be eliminated if the modifications suggested by my colleagues are accepted.

#### MODIFICATIONS PROPOSED BY THE INDIA GOVERNMENT.

22. They propose to omit the very important provision that the resolutions of the legislative council on the entire budget which is to be submitted to them will be binding on the government unless the Governor exercises his special right of restoring the provision in the budget on any specific ground. The Government of India now would treat every

budget resolution only as a recommendation. To my mind, this is a grave departure from the scheme of the Reforms Report. It is said that a Governor would find himself in a very inconvenient position if he had to over-rule a legislative council, and a continuance of that course if the legislative council persists year after year in carrying a resolution with reference to any particular measure would be almost impossible. The very object of the provision is that in the absence of any strong reasons to the contrary the opinion of the legislative council should prevail, and I think this departure from the scheme outlined in the Reforms Report detracts considerably from its value.

23 My Hon'ble colleagues have followed this up by further modifications which practically get rid of all popular and Indian influence.

Instead of one joint budget and one joint purse for the whole government they will create separate purses for ministers and executive council members, respectively, with the result that the budget for transferred subjects will be settled only by the Governor and the minister, and the budget for reserved subjects will be settled only by the Governor and the other members of the executive council. Taxation for the administration of transferred subjects will be left in the hands of the ministers; and, similarly, taxation for reserved subjects will be left entirely in the hands of the executive council members. The rule that the resolutions are binding, unless disallowed or vetoed by the Governor, is not accepted by them. The council's resolutions are to have effect only as recommendations.

The result of all this is that so far as the reserved subjects are concerned, neither the minister nor the council is to have any real voice in the settlement of the budget. This is avowed to be the real purpose of the new proposals. Real popular influence in the settlement of the budget is, therefore, entirely gone. The minister or popular assembly is not to have the final voice in taxation, as the executive council member alone presents the bill for taxation, and if the legislative assembly does not pass it, it will be open to the Governor to get it passed over their heads by grand committees or otherwise. The influence of the minister on reserved subjects in the direction of thrift and expenditure also is removed. I think it substantially reduces the value of the

Reforms Scheme I am therefore unable to accept any of these modifications in the original proposals which are now suggested

24 The advantages of this system are said to be that the ministers as well as the executive council will know what their available resources are, what opening balance will be at their credit and consequently what range of expenditure they may provide for and at what point they must face extra taxation. It will secure to each department the benefit of any improvements which can be expected in the revenue departments. It will, therefore, be an inducement to expand and develop the sources of revenue as the fruits of their labours will not be shared by the other departments. It is also said that each may also borrow for its own purposes. Assuming that there are administrative conveniences in the separation of revenues, these administrative conveniences should not be allowed to weigh for a moment against the outstanding fact that you thereby get rid of the popular influence altogether on the finances of the reserved departments. To this great objection I find no answer forthcoming except that it is desirable that all the reserved subjects should be removed entirely from the influences of the ministers and of the legislative council. I cannot agree to this. On the other side there is the objection advanced by the Congress that under the arrangement proposed in the Reforms Report the transferred subjects will only get "the crumbs from the table," and the unwelcome task of taxation is always imposed upon the minister, even though such taxation might have been necessitated by the needs of the reserved subjects. This argument has been availed of by my colleagues in order to support the scheme of a separate purse. It would be extraordinary if an argument intended to strengthen Indian influence should lead to its elimination. I have already referred to the safeguards provided by the scheme. No taxation can be imposed without the consent of the minister, who can earmark the proceeds of taxation. No responsible member of an executive council is therefore likely to press the claims of the reserved subjects too far, and in particular in view of the enquiry by a commission after a few years; and even if he does so, the final decision rests with the Governor, who is interested in the administration both of the transferred and of the other subjects. Apart from all this,

the legislative council will review the budget and a responsible Governor has to restore the provision of the budget in favour of the reserved subjects by overruling them. It is improbable, therefore, that the transferred subjects will suffer, and I feel strongly that this argument should not weigh in favour of a separate purse, which will operate far more against popular influence than the existing provision. The apprehension expressed by Indian politicians is really due to the phrascology in the report. To remove the same instead of stating that the supply of the reserved subjects will have priority over that of the transferred subjects, I would simply say that the executive government as a whole will apportion the revenue between the transferred and the reserved subjects. If the Ministers and the council members do not agree, the Governor has the right to decide. The effect is absolutely the same, as in the scheme the supply for the reserved subjects can be determined only by the Governor if the Minister does not agree. The proposal of my colleagues that the consent of the Governor is necessary to taxation is a part of the scheme in the Reforms Report whenever there are differences of opinion. After apportionment of the revenue, the necessity of taxation might be considered, the indispensable condition being that provided for in the Report—that there should be no taxation without the consent of the Minister. As to who should introduce the Bill into the Council is a matter which might be left to the Governor. Ordinarily, the member whose department needs the fresh taxation proceeds will no doubt introduce the Bill.

25. I have assumed that there are administrative conveniences in this separation of revenue. It is admitted by my colleagues that the proposals in the Reforms Report have not met with any criticism in India. It will not be right in the circumstances therefore to make any alterations. They point out that any substantial increase in reserved expenditure will be at the mercy of the Minister, although Ministers may have no responsibility for the consequences of refusing the budget provision, but this is an impossible contingency, as in the case of any dispute between the Ministers and the executive council the decision is left to the Governor. In order to support their argument they have to assume that the Governor under his exceptional powers might insist on expenditure on reserved subjects being provided for in the budget leaving

Minister with inadequate funds for the transferred subjects. We are not warranted in making any such assumption, and if the Governor is inclined to exercise his power in that direction he can do it even otherwise. What is to happen if the Governor under the powers of supervision and control which he has over the Minister—powers which my colleagues desire largely increased—were to cut down the funds available for the Minister even if they were not wanted for reserved subjects. Such assumption would render the working of any constitution an impossibility.

Further, the income derived from the sources of revenue which form part of the Reserved list will, after providing for the administration of those subjects and of Law, Justice and Police, leave a large surplus which, with the normal growth of revenue, will be adequate to meet the growing expenditure. I doubt whether any taxation or borrowing for the needs of those Departments has been found necessary in the past or will be required in the future. The annual discussion my colleagues would avoid by settlement of Revenue for a period of time. This will interfere with the legitimate exercise of their power over finance by the Legislative Council; such settlement may lead to taxation and borrowing when otherwise it would be unnecessary, and lead to unnecessary friction and criticism divorced from responsibility. Generally I have to state that my colleagues have, throughout their report, made assumptions which are calculated to show the apparent necessity of a stringent control over the Ministers. All the difficulties suggested by my Colleagues presuppose non-interference under any conditions on the part of the Governor with the Minister and an absence of any provision enabling the Governor to decide in cases of dispute between the Minister and the members of the Executive Council. It appears to me that the provisions in the Reforms Report scheme form a sufficient answer to all the objections advanced.

26. My colleagues are also of opinion that one more official, who will be ordinarily a civilian, should be appointed to the executive council. In the Report the transference of some of the functions of government to Ministers was held to make it "impossible" to retain an executive council of more than two members, one of whom was to be a European and the other an Indian. And this reduction of the European

element from two to one was regarded as equivalent to an increase in the Indian element. My Hon'ble colleagues, however, support their proposal on the ground that the Governor—a new man from England—will be left with only one European adviser as a member of his council. And it is also said that work can be found for one more member. It does not appear that the conclusion that was arrived at at the time the Report was framed that there will not be sufficient work for three members of the Executive Council is unfounded. Before 1911 there were only two members. At present there are three. A good portion of their work will now be transferred to the Ministers. I am satisfied that there is no reason, on the score of work, for the appointment of one more member. A stronger objection is that involved in the second reason given in the Report. It will materially reduce the relative strength of the Indian element in the Executive council. An Indian member will have no chance as against two English official members. For consultation and advice, the Secretary in the Department, who will or may be present, will be available. Neither the *adlati* nor any additional member is required. In reserved subjects, therefore, with the modifications proposed by my colleagues with reference to budget and taxation, this addition of one member will practically get rid of the influence or power accorded to the Indians or representative councils in the Reforms Report. In the interests of good government, is it advisable or necessary to depart from the scheme?

27. First, let us take the budget and consider the restrictions on the provincial governments imposed by the general standing orders and the Secretary of State. The sanction of the Secretary of State is required to the appointment of any English officer drawing a certain pay, to create any new post which would ordinarily be filled by a gazetted English officer; to create any new post over a certain monthly pay, to give any honorarium exceeding, I believe, a thousand rupees, to make any grant of land except under very special conditions. The right to purchase motor cars was so much abused that now they cannot be purchased for public business without the sanction of the Secretary of State. These are only some of the orders; there are many more of the same kind. All these indicate not only the nature of the restrictions that are imposed upon the provincial governments but also the close supervision



which is deemed necessary for the exercise of their powers. There is no reason to think that no such restrictions would be necessary in the future. We propose by these schemes to give the local governments enhanced powers of appointment—powers by which they may appoint officers drawing very high salaries, over even a thousand rupees. We propose now to give them powers to carry out schemes, without reference to Government of India or the Secretary of State, which involve lakhs of rupees. If it was necessary for the Government of India or the Secretary of State to exercise this close supervision over the local governments in the interests of the taxpayer, that supervision can only be relaxed on the ground of increasing popular control. Lord Curzon has remarked, and so also I believe almost every administrator who had to consider this question, on the growing tendency in every department to increase the emoluments and to increase the establishments. Far, therefore, from getting rid of the control over the budget by the Legislative Council, it appears to me that the relaxations by the Government of India and the Secretary of State of their power of control and the additional powers which it is proposed to confer upon the local governments require not only the powers conferred upon the Minister and the Legislative Council by the Reforms Report, but additional powers. Restrictions were placed upon the powers of the governments in India in the appointments of Englishmen because it was felt that otherwise the Indians would have no chance at all.

Similarly, take the questions of industrial expansion, the separation of judicial and executive functions, increase of taxation by recurring settlements without the consent of the legislative councils. All these are really financial questions, and, under the scheme proposed in the Reforms Report, the popular assembly will have considerable influence in shaping the policy of the Government with reference to all these. The proposals of the Government of India will leave the legislative councils and the Minister without any such voice in the settlement of these very great questions. It is therefore a considerable departure from the Reforms Report. My colleagues, I am afraid, do not realize the strength of the feeling for reform due to questions referring to these matters.\*

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\* See paragraphs 8 to 12 above.

They ignore altogether the very important considerations which arise therefrom. There is no split in the Congress Party or, so far as I can see, among Indians on the broad lines of policy that should be pursued on the matters above referred to. The addresses presented to the Secretary of State and the Viceroy draw prominent attention to these grievances.

I cannot help thinking, in these circumstances, that if these restrictions are removed we may expect great waste of public funds in the future and great and alarming discontent. I would, therefore, as already stated as against the new proposals of my colleagues, not only support the scheme in the Reforms Report so far as taxation and budget are concerned, but would go a little further in the same direction by enacting that the Governor's power of restoring any provisions in the budget in the interests of the reserved subjects should not be exercised so as to confer any benefits on the services which they would not obtain in the ordinary course, and the Governor should not be allowed without the sanction of the Secretary of State to restore any provisions in the interests of reserved subjects with reference to any matter for which the sanction of the Secretary of State is now required. It should be remembered that in the case of transferred subjects the council has got the powers of removing the Minister, and a corresponding power does not exist in the case of the reserved subjects.

28. Leaving now the question of the budget, let me take the equally important question of peace and order. If sedition had its origin in Bombay, it would be noticed that this was due to the harsh administration of the plague regulations by a Collector, which would have been impossible if the Indian element was powerful in the government of the country. Similarly the course of maladministration by the Government of Eastern Bengal, which was responsible for the growth of real Bengal sedition, would also have been practically difficult. Under the law which we have recently passed and under certain regulations which were passed at the commencement of the last century to meet certain exceptional classes of cases, it would be open to an executive government in a province to deprive a man of his liberty and of his freedom of speech without the orders of the magistrate or any other judicial tribunal. The press may also be deprived of its

freedom by executive action, the ordinary courts being deprived of their jurisdiction. The Governor of a province has the power of depriving a person who attacks him of his liberty of person and of his property without affording him a public opportunity of proving his allegations before the ordinary tribunals of the country. Under this law no Indian paper would venture to indulge in criticisms distasteful to the head of a province. Any agitation against the civil service or bureaucratic form of government would scarcely be possible under the civilian head of a province. The Home Rule agitation, or in fact any constitutional agitation, may be suppressed without the interference of a judicial tribunal solely at the instance of an executive government. In these circumstances it seems to me to be imperative that the Indian element and the popular element should be powerful in the government of a province. Otherwise we will certainly perpetuate all those evils due to the inutility of the Councils which as forcibly pointed out in the report are responsible for the widening gulf between officials and non-officials.

#### GRAND COMMITTEES.

29. It is proposed to constitute grand committees out of the members of the legislative councils in order to legislate on "reserved" subjects when the governor considers such legislation "is essential to the discharge of his responsibility for the peace or tranquillity of the province, or any part thereof, or for the discharge of his responsibility for the reserved subjects." So far as the "reserved" subjects are concerned, it is said that such exceptional means of legislation are required on account of the poverty, ignorance and helplessness of the great majority of the population who cannot for that reason be left to the mercies of a legislative council who will not adequately protect their interests. Further, it is said that the masses themselves will not take any part in political life, and therefore all such questions concerning the revenue, those arising from the relations of the landlord and tenant, must be retained by the executive government. It is also said that such power is necessary in order to defend British commercial interests and other questions concerning industries, etc. All great questions that arise between classes and creeds also should not be left to the ordinary legislative councils. I have pointed out already that

it may well be doubted whether in the interests of the good government of the country such exceptional powers are necessary. Our electorates are becoming wider ; all kinds of interests and views divergent among themselves are going to be represented ; and if, in these circumstances, the government cannot secure any majority, the probabilities of their being in error are great. The grand committee, as constituted, is obviously intended as a check on a popular assembly, and is in itself therefore an undesirable institution. It creates an undesirable antagonism between a local executive and a local legislative council, and if there are other means of attaining the same object in view it is undesirable to retain it. I think the safeguard of the Imperial Legislative Council for all affirmative legislation and the powers of veto possessed by the Governor and the Viceroy to negative any Act which is passed by the local legislative council, and the power of ordinance for urgent occasions would be amply sufficient. This would secure a careful consideration of a measure rejected by the local legislative council before its introduction into the Imperial Legislative Council.

The objections to legislation by the Government of India are stated in paragraph 248 of the Reforms Report. The first objection advanced is that such legislation will strike at the root principle of provincial autonomy, according to which the provincial governments must be autonomous in their own legislative field. Provincial autonomy was promised by Lord Hardinge's Delhi Despatch of 1911 for the purpose of increasing popular control. We, therefore, do not want the so-called provincial autonomy if it is intended thereby to increase the power of the executive government over the legislative council. On the other hand, it is a principle recognised by the Reforms Report that the control now exercised by the Government of India and by the Secretary of State over subordinate governments can be relaxed only in proportion to increasing popular control. It is quite right, therefore, that where a provincial legislative council has passed a measure, the Imperial Government or the Secretary of State should interfere as little as possible ; but that the local executive government should be able to get passed through a grand committee a measure which has been rejected by the legislative council goes against all these principles. There is in that case no question of real provincial autonomy. It must be borne in mind that the

grand committee though technically a part of the legislature is brought into existence and will always be utilized to register the decrees of the executive government and may, therefore, be regarded as its agent for enacting measures rejected by the legislative council. The provincial government becomes independent both of the provincial legislative council and of the Imperial Government ; whereas, the proposal I put forward retains the power of the Imperial Government, for it can hardly be doubted that legislation by a grand committee will practically put an end to legislation in the Imperial Council.

The other objection that is advanced that the Government of India would be very reluctant to undertake responsibility by legislation is in my opinion rather a recommendation than an objection as a legislative council should be overruled only in very exceptional cases. The Government of India cannot be accused "of ignorance of local conditions" as they will be acting only on the advice of the local Governments and after full consideration of the discussions in the local legislative council.

Disregard of provincial wishes is a common factor whether the legislation is by the local executive government or by the Imperial legislative council. The Imperial Government in such a case would be an arbitrator between the local executive government and its legislative council. The "ungrateful" task has to be undertaken by somebody, and it is much better that it should be undertaken by a Government far removed from local excitement. The reason that such legislation is unpopular and controversial is only an argument for subjecting it to examination by a government which is not subject to local temptations of prestige, power and increased revenue. The Imperial Government will be able to attach due weight to the circumstances that may be urged by the local Government and the arguments which induced the local legislative council to reject the measure. I also disagree with the proposal to reduce the elected element in the Grand Committee.

30. We are all agreed that the heads of provinces should, in future, be Governors instead of Lieutenant-Governors (paragraph 218), but my colleagues are of opinion that the existing practice of appointing only civilians in accordance with the rule which requires twelve years' service in India for a Lieutenant-Governorship must be or will be followed for a

long time to come. I regret I cannot share in this view. The primary consideration that should weigh with the Secretary of State in making the appointment is the fitness of the person to carry out the duties not, as hitherto, of an autocratic head of a province but of a constitutional ruler. The Civil Service generally have shown their hostility to the proposed reforms. They have expressed their strong opinion of the unfitness of Indians to hold high appointments or to carry out the duties which will devolve upon them as Parliamentary leaders. There will be many persons therefore among them who are not likely to work in harmony with Indians or to view with sympathy their political progress, which must curtail the privileges hitherto enjoyed by their own service. The Secretary of State should certainly therefore take this question into consideration when he makes the appointment. "It may indeed be questioned whether the life spent in the Indian Civil Service is calculated, except in rare cases, to stimulate that part of political talent which consists in the study and guidance of political opinion, or in the framing of the large legislative proposals which are from time to time needed in actively thinking political communities." (a) This fact also will have to be borne in mind. Those civilians who are in sympathy with Indian progress or who can be trusted to work smoothly with the political machinery of the future under the altered conditions and who are not prejudiced by the feelings of hostility to the proposed reforms evinced by many of them may be appointed as heads of provinces. I do not think, therefore, that the confident expression of opinion by my colleagues as to the continuance of the practice hitherto existing is justified.

31. The same question arises with reference to the qualifications of a member of the executive council. It is intended, according to the Reforms Report, that one member should be an Indian and the other an official with qualifications of 12 years' service under the Crown which is now required by law. I do not understand the Report to lay down that this should be retained as a statutory qualification, though no doubt in practice the qualification will be insisted upon. At present the appointment is in practice limited to the Civil Service.

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(a) Mr. H. A. L. Fisher. "The Empire and the Future."

One can easily conceive cases where a Governor might require the presence in his executive council of a person of outstanding abilities in some particular line either in India or in England. There is no reason why the Secretary of State should be debarred from nominating him. My colleagues are of opinion that there must be a statutory provision that one member should be an Indian and that the other should have the existing qualification. I doubt whether this is necessary.

32. The only other point which I have to notice has reference to the right of a Legislative Council to make rules for its own conduct of business. Every Council ought to have such a right, and no reasons have been shown why we should insist upon the consent of the President. The rights and privileges of a President or of a Vice-President, in so far as they do not refer to the ordinary conduct of business, should not, of course, be interfered with.

#### THE GOVERNMENT OF INDIA.

33. The first question has reference to responsible government. I recognise that it has been laid down in the Report that there should be no responsibility in the Government of India as in provincial governments, that is to say, that there should be no Indian Minister responsible to the legislature. This can be defended only on the ground that many of the departments of administration have been transferred to the provincial governments, and that those retained by the Government of India are far too important to be handed over to responsible Indian Ministers before the experiments have justified themselves in the provinces. These, of course, are subjects which concern peace and order and the good government of the country, foreign states, Army and Navy, and also questions in which the interests of England or her people are greatly involved. There are, however, questions which only concern the internal administration of the country and which have been recognised as fit for transfer to a Minister and the legislative council. In all those cases, therefore, in which the Government of India retain a right to interfere with the transferred subjects there should be no objection to introducing responsibility in the central government. Indeed responsible government seems to be necessary in order to carry out the principles indicated in the Report.

It is proposed to allow powers of interference to the Government of India in the transferred departments of the provinces, for instance, to secure uniformity of legislation where such legislation is considered desirable in the interests of India or of more than one province. It is also desired to retain in the Government of India power to decide questions which affect more than one province. *Ex hypothesi*, these are subjects which ordinarily should be dealt with by Ministers in accordance with the will of the local legislature, and if it is proposed to remove these from the jurisdiction of the local Minister and of the legislative council for reasons which have nothing to do with their capacity to deal with questions of that character, it is but reasonable that in the Government of India also the decision of such questions should be left to the legislature and an Indian Minister. If necessary an Indian member of the executive council may be an Indian Minister for this purpose. Supposing there are certain subjects which are not now transferred for temporary reasons, and of which we contemplate transference in the course of three or four years, I cannot see any reason why in such cases also responsible government should not be introduced so far as such subjects are concerned. Responsible government in the provinces demands responsible government in the Government of India in the same subjects, as otherwise provincial responsibility will be diluted.

### THE COUNCIL OF STATE.

34. The next important question refers to the Council of State. I have very strong objections to the power given to the executive government to pass laws through the Council of State without a previous discussion in the legislative assembly. The Governor-General can exercise his power of issuing ordinances which will operate for six months. If any discussion is necessary, he can introduce the Bill into the Legislative Council to ascertain the popular view. If it is a matter in which the Governor-General in Council has made up his mind, then, of course, a discussion is useless and unnecessary and an ordinance can at once be issued. Now with reference to the Council of State itself.

A Council of State as a second chamber representing interests not properly represented in the Imperial Assembly, I understand, and I raise no objection to it. A Council of State



for the purpose of securing delay and for greater deliberation of subjects also might be necessary, and I would not raise any objection to such a council either. But this Council of State is constituted for neither of these purposes. Its avowed purpose is to carry out the will of the executive government when they cannot carry it out on account of the opposition of the legislative assembly. It is, in fact, an unreal council. Rather than constitute such a council, it is much better to lay on the executive council itself directly the obligation to pass the law. I will not then be exercised so frequently as it would now be with a State Council to give the measure that it passes an unreal appearance of popular support. It will belittle the importance of the legislative assembly and thus create an antagonism between it and the State Council and the executive government.

There is another serious objection. It is undesirable to give the executive council unrestricted freedom of action in matters in which popular opinion is decidedly against it. Disastrous consequences have attended such freedom of action ; and as long as the executive government have that power of action, they are bound in the discharge of their responsibility to act upon it if they take a view contrary to that of the legislature. Again, there are great questions of administrative reform which should be carried out and which have not been carried out on account of the opposition of the bureaucracy due to their apprehension of loss of prestige, etc. I have already referred to many of them already. There can be little doubt that a Council of State would check reform as in the past in all those directions. I think, therefore, that the Council of State as constituted will prove an obstruction. At the same time, I recognise that in the Reforms Report it has been laid down that in matters referred to above, there should be no responsibility to the legislature. A *via media* appears to be to direct that in all cases Bills should first be submitted to the legislative assembly, and on their failure to pass such Bills, all the papers should be laid before the House of Commons to whom the Select Committee would no doubt submit their report ; and it is only after such sanction is obtained that further steps should be taken to proceed with the measure, either by the Executive Council or the Council of State.

Two further courses have been suggested : to confine the Governor-General's or Viceroy's power of certification to

certain definite subjects or to curtail the power of certification to those Bills which have not been rejected by a certain percentage of the members of the Legislative Council.

I am clearly of opinion that the power of the Council of State, if it is not to be dropped, should be curtailed.

#### BUDGET.

35. It is now proposed to delegate larger powers to the Government of India. It is obvious that hitherto the interference of the Secretary of State has been necessary in the interests of the Indian taxpayer, and that it has been necessary will appear from the various orders which restrict the Government of India's power of expenditure—then the Secretary of State should be allowed to forego the exercise of his own power only with the development of popular control; otherwise, there is no justification. That the powers hitherto exercised by the Secretary of State were necessary in the interests of the taxpayer will appear from an examination of the instances in which such power has been exercised. It will also appear from a consideration of the rules themselves and the occasions and the reasons which led to the passing of such rules. It appears to me therefore that all resolutions on the budget by the legislative assembly should be given effect to in all those instances in which it would not now be within the competence of the Government of India to incur any outlay without the sanction of the Secretary of State; at any rate, if full effect is not to be given to it, the power to overrule the legislative council in that respect should not be given to the executive government in India but should rest only with the Secretary of State.

36. I do not agree with my colleagues in discarding the provision about appointing members of the assembly to positions analogous to that of Parliamentary Under-Secretaries or the Standing Committees. At present, or under the new scheme, there is no means of non-official members acquiring that knowledge which can be acquired only by holding an office. The knowledge of Indians in the public services will not be available to non-officials for criticism of Government proposals. The Ministers will have intimate knowledge only of the transferred departments and that also only in the provinces. These under-secretaryships and standing com-

mittees will enable the non-officials to acquire that information which they would otherwise lack. In the earlier stages of discussion, it was generally admitted that these would form a good training ground for future administrators. It is undesirable, therefore, to drop them.

In the Imperial Council also, as in the provincial councils, I think it should be left to the council to frame their own rules.

37. If there is any demand in which the associations who have addressed the Secretary of State and the Viceroy and all classes are unanimous, it is in the request they make that half the members of the Executive Councils, both Provincial and Imperial, should be Indians. The Congress and the Moslem League as well as the Sikhs and the non-Brahmin classes of Madras want it. The reasons are obvious. Everybody feels that without the infusion of an adequate Indian element into the Executive Councils, the reforms that are essential for the better government of the country will not be carried out. Again, there are various questions, particularly those affecting finance, that are settled by the Government of India and by the Secretary of State in consultation with one another which require a strong Indian element in the Executive Council. In all those questions, without adequate Indian influence the Government of India will easily yield to the Secretary of State. Various influences will act upon the Government of India which require adequate Indian influence to counteract them. Indian influence is also required to prevent the Executive Government of India from being unduly autocratic or unsympathetic towards popular movements. I would, therefore, propose the addition of one more Indian member to the two members proposed by the Government of India. If this is not accepted, I would suggest the appointment of an Indian Minister to exercise the Government of India control over the transferred departments in the provinces. He may be called in for consultation but not for decision.

C. SANKARAN NAIR.

*Delhi, 5th March 1919.*

## Report of the Franchise Committee.

To

HIS EXCELLENCY THE GOVERNOR-GENERAL  
IN COUNCIL.

YOUR EXCELLENCY,

In accordance with the directions of the Right Hon'ble the Secretary of State of India, we have the honour to forward to Your Excellency, for submission to the Secretary of State, our report on questions connected with franchise.

2. The terms of reference to us were as follows :—

I. As regards provincial legislative Councils :—

- (1) to advise on franchises and constituencies in each province with the object of securing as broad a franchise and as representative a council as present circumstances in each province permit (Report, paragraph 226) ;
- (2) to devise means for direct election as far as possible (paragraph 226) ,
- (3) to advise how far representation can be adequately and effectively secured by territorial electorates, or where circumstances seem to require it in order to secure adequate representation of minorities, of special interests or of backward classes, by (i) special or communal electorates ; or (ii) reserving elective seats for special classes in plural constituencies , or (iii) nomination in such measure as the exigencies of fair and adequate representation entail (paragraph 232) ; or (iv) other expedients, for instance proportional representation, etc.,
- (4) to advise as to the number of nominated official members ;
- (5) as a result of (1) to (4), to propose a complete scheme for size and composition of each provincial council.

II. As regards the Indian Legislative Assembly :

- (1) to consider the best means of constituting that body in accordance with the recommendations in paragraphs 273 to 275 of the Report without necessarily adhering to the exact numerical strength suggested, and, particularly,
- (2) to advise on the possibility of direct elections, and if such a system is found feasible to propose franchise and constituencies: otherwise to propose a scheme of indirect election.

### III. As regards the Council of State—

- (1) to advise as to the method of election to that body in accordance with the schemes set forth in paragraph 277, and in particular,
- (2) to consider (*a*) the material available for the six special constituencies; and (*b*) the provisions necessary for securing that the special Muhammadan and landed members should, as far as possible, be representative of the whole of India.

### IV. In examining the above questions the Committee will have regard to the decision of the Government of India as to the areas which are to be the subject of special treatment (paragraph 199).

3. *Relevant portions of the Report on Indian Constitutional Reforms.*—In making our enquiry we have borne in mind the observations and recommendations contained in the following paragraphs of the Joint Report of Your Excellency and the Secretary of State on Indian Constitutional Reforms, which bear directly upon the questions referred to us:

Defects of the existing electoral system—paragraphs 83 and 84.

Conditions of the problem—paragraphs 131 to 155.

Treatment of backward tracts—paragraph 199.

Constitution of provincial legislatures and representation of minorities—paragraphs 225 to 233.

Grand Committees—paragraph 252.

The Indian Legislative Assembly—paragraphs 273 to 275.

The Council of State—paragraph 277.

Our report must be read with reference to and in the light of these paragraphs.

4. *Method of our enquiry.*—We have visited the three presidencies of Bengal, Madras and Bombay and also Bihar and Orissa, the United Provinces of Agra and Oudh, the Punjab and the Central Provinces. We have held sittings for the purpose of taking evidence in the three presidency towns and at Patna, Lucknow, Lahore and Nagpur. At each of these places we had the advantage, after hearing the local evidence, of meeting the heads of the respective local governments and (in cases where the system of executive council government is in force) also the members of the Executive Councils, and of discussing with them questions relating to the franchise scheme for their respective provinces. With regard to Assam the Chief Commissioner arranged that the evidence for that province should be brought before us at sittings which we held in Calcutta, where we also had the advantage of discussing with him important questions connected with the franchise scheme for his province.

During our enquiry into the case of each province, we were joined in our deliberations by two added members (one official and one non-official) appointed by the respective local governments with a view to the adequate representation of the local conditions. We desire to take this opportunity of expressing our obligations to our added members (whose names are given in appendix XII) for the great assistance which we have obtained from them. Not only did they take a share in the examination of the evidence and in deliberating upon the franchise scheme, but in several cases they supplied us with memoranda of their views.

The names of the witnesses who gave evidence before us and (in the case of representative witnesses) of the bodies or associations on whose behalf they appeared, will be found in appendix XIII to this report. We have kept a record of the evidence given before us and have deposited it with the Home Department of the Government of India. In appendix XIV will be found the original proposals of the various local governments in regard to franchise schemes together with a note of the proceedings at our meetings with the governments of the various provinces. We have also incorporated in that appen-

dix such amended proposals or further memoranda as were subsequently furnished to us by those governments.

As a result of this procedure, we are in a position to place before Your Excellency and the Secretary of State detailed recommendations relating to the matters stated in our terms of reference.

#### PROVINCIAL LEGISLATIVE COUNCILS.

5. Our proposals for the constitution of and election to the provincial legislative councils are embodied in eight schemes which will be found set out in appendices I to VIII to this report. While we take full responsibility for the recommendations which we have embodied in these schemes, it is a satisfaction to us that, in framing proposals for Bengal, Bihar and Orissa, the United Provinces, the Punjab and the Central Provinces, we have found it possible to adhere to the general lines of the schemes which the local governments prepared for our consideration. We are glad that in many cases our amendments to the original schemes of these governments are such as they in subsequent communications with us were prepared to approve.

The government of Bombay placed before us a scheme which contained alternative views on some of the main problems of representation. We desire to thank His Excellency Sir George Lloyd who, at the time of our arrival in Bombay, had been in office for only five weeks, for the great assistance afforded to us. We must also record our obligations to our added member, Mr. L. C. Crump, I. C. S., for procuring for us the additional information which we required to enable us to complete the franchise scheme for this presidency.

In Madras the government proposed two alternative schemes. The first (Scheme A) was based wholly on communal electorates, and commended itself to them as necessary for a council with such powers as are contemplated in the Joint Report. The second (Scheme B) was based on a system of territorial electorates with a communal electorate for Muhammadans only, and was recommended for adoption should the council continue to exercise, as at present, functions which are mainly advisory. We were precluded by our terms of reference from considering these alternative schemes under

the limitations suggested by the local government, but we found the material embodied in Scheme B of assistance to us in preparing our proposals for the presidency. Our deliberations were assisted by our discussion with the Governor in Council of several problems that arose from the evidence presented to us.

6. *Statistical Summary. Exclusion of backward tracts.*—We have prefaced our scheme for each province with a brief statistical summary of the salient facts regarding its area and the composition of its population. We have given in each case figures relating to those backward tracts which the local government has proposed to exclude from the operation of the scheme and which are referred to in item IV of our terms of reference. The Government of India have not communicated to us their decision on these proposals. Where we understand that questions relating to these backward tracts will be dealt with in the legislative council, we have provided for their representation by nomination, but where the local government proposes to exclude them entirely from the purview of the legislative council, no such provision has been made.

#### FRANCHISE PROPOSALS.

7. *Disqualifications.*—In our recommendations regarding the franchise we have first laid down the general disqualifications of electors, which are common to all provinces. In accordance with the preponderating weight of the evidence received by us, we propose to disqualify women, persons under 21 years of age, subjects of any foreign State (but not of a Native State in India), and persons of unsound mind. The only one of these recommendations requiring discussion is that relating to the disqualification of women.

8. *Female Suffrage.*—We received numerous petitions from women of the educated classes urging the cause of female suffrage on the same property qualifications as for men, or at least the admission of women graduates to the franchise. More than one lady appeared before us to support this view. Several political associations, especially in Bombay and Madras, urged the same cause, but during the oral examination of their representatives we found reason to believe that



female suffrage was advocated rather on general grounds than on considerations of practicability. None of the local governments advised the extension of the franchise to women, though the Chief Commissioner of Assam proposed a franchise for European women, and the Bombay government were divided on the point.

In some provinces the municipal franchise includes women, but the evidence placed before us showed that it is sparingly exercised, except perhaps in Bombay city. We are satisfied that the social conditions of India make it premature to extend the franchise to Indian women at this juncture, when so large a proportion of male electors require education in the use of a responsible vote. Further, until the custom of seclusion of women, followed by many classes and communities, is relaxed, female suffrage would hardly be a reality; it would be out of harmony with the conservative feeling of the country, and it would involve grave difficulties in the actual recording of votes. Whilst fully appreciating the object of those who advocate this measure as an aid to the emancipation of women, we have decided not to recommend the extension of the suffrage to them, but are of opinion that at the next revision (as contemplated by the Joint Report) of the constitutions of the councils the matter should be reconsidered in the light of the experience gained of the working of the electoral system and of social conditions as they then exist.

We have, however, to record that one of our members (Mr. Hogg) is of opinion that, while there may be no very general demand for female suffrage at present, no strong opposition to it was revealed by the evidence, and that therefore it is advisable to remove the sex disqualification at the outset of the development of responsible government in India. He would not, however, be in favour of making any special or separate arrangements for the recording of women's votes.

9. *Qualifications of electors.*—Our general proposals for the franchise are based upon the principle of residence within the constituency and the possession of certain property qualifications as evidenced by the payment of land revenue, rent or local rates in rural areas, and of municipal rates in urban areas, and of income tax generally. In tracts where the land revenue is subject to periodical revision, land reve-

nue has been adopted as the best measure of property qualification, but in tracts where the land revenue is permanently settled, we have substituted the payment of local rates, which are based on a periodical rental valuation. In only rare cases have we been obliged, in the absence of a suitable basis of taxation, to have recourse to a qualification based on the possession of immoveable property. We have thought it desirable to depart from the above principles in one important respect, in so far as we recommend the enfranchisement of all retired and pensioned officers of the Indian Army, whether of commissioned or non-commissioned rank. This step was universally and strongly advocated in the Punjab, and we have considered it advisable to extend it to all provinces.

In our recommendations we have not attempted to define the franchise qualifications and similar matters with that precision of phraseology which will be required in the regulations of each province; but our proposals will, we trust, form a suitable basis for the drafting of the necessary regulations.

10 *Scheme of electorates.*—In prescribing the amount of the property qualification, we have been guided by the principle enunciated in paragraph 226 of the Joint Report that the franchise should be as broad as possible, consistently with the avoidance of any such inordinate extension as might lead to a breakdown of the electoral machinery through sheer weight of numbers. In the case of each province we have satisfied ourselves that our proposals do not overstep this limit. The large proportion of illiterate voters may no doubt cause practical difficulty: but the problem is not a new one in India, and a similar problem has already been faced with success in municipal elections by the use of coloured ballot boxes and other like devices. We are satisfied that a considerable amount of non-official assistance from honorary magistrates and other persons of local position will be available to assist the officers of government in working the electoral machinery. We have not thought fit to impose any literary test, although this course was urged by some witnesses, since this would exclude many electors who are competent to manage their own affairs. Nor have we sought to attain uniformity in the standard of property qualification for the various provinces. We have relied largely upon the local experience of the government witnesses who appeared before us, and have not

hesitated to recommend differing qualifications even within the same province where we were satisfied that social and economic differences justified the discrimination. We have, however, proposed the same qualification for all communities within the same area, although this will enfranchise a smaller proportion of Muhammadans than of non-Muhammadans. We consider that this is more desirable than to lower the qualification for a particular community. The qualifications adopted by us will result in enfranchising a substantially higher proportion of the urban than of the rural population, a result which we believe to be justified by the higher standard of wealth and intelligence in the towns.

II. *Size of electorates.*—The following table shows the number of electors in each province according to the rough estimates prepared for us:—

Province	Total population.	Urban electors.	Rural electors.	Total electors
Madras .. ...	39,827,885	32,000	510,000	542,000
Bombay ... ..	19,580,312	149,000	504,000	653,000
Bengal ... ..	45,063,697	106,000	1,122,000	1,228,000
United Provinces .	47,182,044	64,500	1,419,000	1,483,500
Punjab ... ..	19,565,013	77,000	160,000	237,000
Bihar and Orissa ...	32,446,461	58,500	57,500	576,000
Central Provinces .	12,269,638	30,500	120,000	159,500
Assam ... ..	6,000,000	..	...	300,000

It must be borne in mind that the total population of the provinces includes very large classes such as the "depressed classes" and aborigines which furnish few or no voters and will be represented by nomination.

We desire to record that in the case of the rural franchises in the provinces of Bihar and Orissa and the United Provinces, one of our members (Mr Hailey) would have preferred that the rental qualification should be raised in the case of Bihar and Orissa from Rs. 16, 64 and 48 to Rs. 32, 96 and 64 respectively, and in the case of the United Provinces from Rs. 50 and 25 to Rs. 100 and 50 for the revenue and rental qualifications. He considers that in each case the electorate would be reduced to a more manageable size, and the

representation of the landlord and tenant interests more equally balanced. The lower standard was, however, in each case proposed by the local government, and the other members of the Committee are not prepared to recommend the placing of the qualification at a higher level than was proposed by the local governments, being satisfied that the lower level would not produce an unmanageable number of voters, and would not include in the electoral roll persons of an average status inferior to those whom it is proposed to enfranchise in other provinces.

On the other hand, another of our members (Sahibzada Aftab Ahmed) is anxious to see a substantial reduction both in the rural and urban qualifications proposed for the Punjab, so as to secure a material increase in the number of electors, more nearly approximating to that proposed for the United Provinces. He points out that the population of the Punjab consists mainly of small peasant proprietors, who are likely to be better fitted both to use the vote and to appreciate the education derived from its exercise, than the large number of tenants enfranchised in other provinces, that this class has rendered conspicuous services to the State during the war, and that there is, in his opinion, a general feeling in the Punjab that the province should not be refused political privileges granted in other parts of India. The standard which we have adopted was, however, proposed by the local government, which was strongly adverse to a lowering of the standard until further experience of the working of the franchise had been gained. We were not prepared to overrule this view, but we think it likely that, at the next revision of the constitutional arrangements of the province, it may be found possible to adopt a somewhat lower franchise qualification.

12. *Direct election with territorial constituencies.*—In paragraph 83 of the Joint Report reference is made to the restricted nature of the existing franchise, and this is further illustrated by the statistics of the present number of electors given in the statistical summary of each province. Except in the case of Muhammadans in some provinces, the general population is represented only by a system of indirect election through members of municipal and district boards. If our proposals are accepted, a large number of electors will for the first time have an opportunity of choosing their representatives by direct election. We have endeavoured to

adopt the district as the territorial area for constituencies, it is a well recognized administrative unit, with generally homogeneous interests, and affords the most convenient basis for the preparation of the electoral roll and the organization of electoral machinery. We have departed from this principle in the case of cities with a large population, which have been recognized as separate constituencies. The smaller towns have usually been merged into the rural constituencies, and only where local circumstances rendered such a course unsuitable have we grouped these towns into separate urban constituencies. It will be observed that the amount of representation given to urban constituencies is on a liberal basis as compared with their population, but here also we consider this to be justified by their superior standard of wealth and intelligence and by the larger interest evinced in political questions. The towns have, moreover, a more extended experience of the use of the franchise, since it has been more widely exercised in municipal than in rural local self-government. So far as practicable, we have endeavoured to provide at least one seat in each district; but it has been necessary to group districts together in order to form constituencies for the representation of communal minorities where their numbers are small. As regards the allocation of seats, we have followed no single principle, but have endeavoured to allot seats proportionately to the importance of the constituency measured by a combination of factors such as population, estimated number of voters and other local conditions. In this matter we have, where practicable, followed closely the proposals made to us by the local governments.

13 *Single and plural member constituencies.*—In view of the fact that the franchise will be extended to a large proportion of electors inexperienced in the exercise of the vote, we consider that it is necessary at present to adopt the most simple method of election. Thus, we contemplate as a general rule single member constituencies, but our detailed proposals leave a latitude to the local governments in cases where a rigid insistence on this rule is unsuited to the local conditions, especially in the presidencies of Madras and Bombay where special circumstances may make it desirable to form plural member constituencies. In preparing our proposals for the formation of constituencies we have been much assisted by the material placed before us by the local govern-

ments. We have, however, to recognize that the estimates of the number of electors are at present necessarily imperfect, and may have to be substantially modified. Further, the local governments may wish to recommend minor adjustments of the geographical groupings of areas into constituencies. We accordingly suggest that, after statutory effect has been given to our recommendations, local governments should be free to bring forward, for the consideration of Your Excellency in Council, proposals for any changes in detail they may deem necessary in the constituencies which we recommend, provided that the size and composition of the councils and the franchise qualifications remain unaltered.

14. *Methods of voting*.—For reasons similar to those in the preceding paragraph we are opposed to the introduction of the more elaborate systems of voting, such as Proportional Representation, the Limited Vote and the Cumulative Vote, although we have allowed the latter system to continue in Bombay City, where the voters have had experience of it for some years in municipal elections, and where there is a general feeling in favour of its retention. We recommend that plural voting should be forbidden save, of course, in the sense that, where a constituency returns more than one member, each elector will have as many votes as there are to be members. This statement applies to all general and communal constituencies, but not to the case of the constituencies formed for the representation of special interests referred to in a later portion of this report. Where an elector is entitled to a vote in one or more of such constituencies, he will also be allowed, in addition, to exercise his vote in one general or communal constituency. We consider that, so far as possible, the arrangements should admit of the completion of the election in each constituency in a single day, though elections throughout the province may extend over a longer period.

#### COMMUNAL REPRESENTATION.

15. *Muhammadans*.—The Joint Report (paragraphs 231 and 232) recognizes the necessity for the communal representation of Muhammadans in provinces where they do not form a majority of electors. The evidence received by us and the opinions of local governments concerned were almost unanimous in favour of this course. In all provinces, except

Bengal and the Punjab, Muhammadans are in a minority as regards both population and electors. In Bengal and the Punjab, where Muhammadans form a majority of the population, our rough estimates show that they form a minority of electors. There was very general agreement in favour of communal representation for Muhammadans in those provinces as well as in the rest of India, and the local governments urged the same step. Both Hindus and Muhammadans are thus in substantial agreement that the latter should everywhere enjoy communal electorates, and we have no hesitation in recommending that effect should be given to this common desire. We have consequently provided for the preparation of separate Muhammadan and non-Muhammadan electoral rolls, and for separate Muhammadan constituencies. In allocating the proportion of Muhammadan and non-Muhammadan seats, we have been generally urged to follow the agreement reached by the political representatives of the two parties at the joint session of the Indian National Congress and All-India Muslim League held at Lucknow in December 1916, referred to in paragraph 163 of the Joint Report, under which certain proportions were fixed for the amount of Muhammadan representation in the provincial and imperial legislative councils. The great majority of Indian witnesses and the representatives of associations, political and non-political alike, not excluding those in which Hindu interests preponderate, adhered to this compact, and it seems to us that any departure from its terms would revive in an aggravated form a controversy which it has done much to compose. In the provinces of Bombay, Bengal, the United Provinces, the Punjab and Bihar and Orissa, the local governments recommended us to adhere to the compact, whilst the Madras government provided in the first of its alternative schemes approximately the proportion of Muhammadan representation which the compact fixed. In the interests of India as a whole, we have, therefore, felt ourselves amply justified in accepting the compact as a guide in allocating the proportion of Muhammadan representation in the councils.

16. *Sikhs*.—In the Punjab we have recommended a separate electoral roll and separate constituencies for the Sikhs, following in this respect the recommendation contained in paragraph 232 of the Joint Report. There is some difficulty in defining with accuracy the distinction between some classes

of Sikhs and Hindus ; our suggestion for meeting this difficulty is to require that the officer responsible for preparing the electoral roll shall accept the declaration of an elector that he is a Sikh, unless he is satisfied that the declaration is not made in good faith.

17. *Indian Christians, Europeans and Anglo-Indians* — The other communities for which we recommend separate communal electorates are Indian Christians, Europeans and Anglo-Indians. In existing conditions candidates belonging to these communities will have no chance of being elected by general constituencies, and we would refer to Your Excellency's speech at the opening of the session of your legislative council at Simla in September 1918, in which this question was left for our consideration unfettered by the views expressed in the Joint Report. We have restricted such communal electorates to Indian Christians in Madras, to Europeans in Madras, Bombay, Bengal, the United Provinces and Bihar and Orissa, and to Anglo-Indians in Madras and Bengal, these being the only provinces in which in our opinion the strength and importance of these several communities justify this special treatment, though one of our members (Mr. Hogg) would like to see the system extended to Anglo-Indians in Bombay and the United Provinces. The Indian Christian community in the Madras presidency numbers over a million, is growing in importance and strength, and has a high standard of literacy. It is important to note that the representatives of both the Roman Catholic and Protestant Associations expressed their willingness to unite in a common electorate. As regards Europeans, our action needs but little justification beyond an appeal both to history and existing facts. We shall subsequently deal with the representation of European commerce and industry, but in addition we feel that the European community as such is entitled to separate representation. There are many interests, such as those of professional men, government and private employées, educationists, missionaries and the like, which would not be adequately represented by members selected primarily on behalf of the capital concerned in commercial and industrial activities. The Anglo-Indian community presents a question of greater difficulty, but it is desirable to afford to them, as well as to Indian Christians, an opportunity for political education, which cannot well be secured otherwise than through the grant of representation by



communal election. We should regard it as unfortunate if these communities failed to take their share in the rapidly developing political life of India. Some difficulty arises in framing definitions of European and Anglo-Indian. We have set out in appendix XI a form of words which will, we hope, prove of some assistance to those whose duty it will be to prepare the necessary regulations. We have not overlooked the recommendation of the Joint Report in favour of the representation of numerically unimportant minorities by nomination ; but, in addition to the considerations mentioned above, we would note that a representative appointed by nomination would be debarred from selection for the post of minister. In recommending communal representation for these and other communities, we have done so in the hope that it will be possible at no very distant date to merge all communities into one general electorate.

18. *Other claims to communal representation.*—Claims for separate electorates were placed before us by numerous other communities, such as the Mahishyas of Bengal and Assam, the Marwaris of Calcutta, the Bengali domiciled community of Bihar and Orissa, the Ahoms of Assam, the Mahars of the Central Provinces, the Uriyas of Madras and the Parsis of Bombay. In these cases we did not feel justified in admitting the claim. In the southern parts of the Bombay presidency and in Madras (but fortunately in no other parts of India) claims were put forward by non-Brahman Hindus for separate communal representation as a means of protection against the alleged ascendancy of the Brahman. The Lingayets of the Bombay presidency asked on this ground for the protection of their interests by the reservation of seats in plural member constituencies. We believe that this organized community will find no difficulty in securing representation through a general electorate in the districts where they are numerous, and the result of elections to local bodies tends to confirm us in this belief.

19. *Marathas and allied castes in Bombay.*—A similar claim on similar grounds was urged by the Marathas and allied castes in the Deccan and Southern divisions of the Bombay presidency. The representatives of this class were divided in their recommendations, some urging the necessity for separate electorates and others proposing the reservation of seats in plural member constituencies. Two of our mem-

bers (Mr. Hailey and Mr. Hogg) would have been glad to grant special electoral facilities to them by the reservation of a single seat in each of the six districts where they preponderate. They consider that this guarantee would secure to them an assured minimum of representation, of which they would otherwise be uncertain owing to the ascendancy of the Brahman. They believe that, if this representation were once secured, the community would be encouraged to take its share in the political life of the province, from which it might otherwise be excluded. The majority of the Committee, however, are of opinion that in view of the facts that the Marathas and allied castes number over 5 millions out of 14 million Hindus in the presidency proper, and that their voting strength will largely predominate in at least five districts with 12 seats, no sufficient case for special treatment has been established.

20. *Non-Brahmans of Madras*.—In Madras a similar question was raised in a very acute form by the claim to communal representation of the non-Brahman Hindus of that presidency. Before our arrival in Madras, we had received a considerable body of representations relating to this question and made ourselves acquainted with the discussions of the subject in the press. It had also been publicly stated that the composition of our Committee made it impossible for us to consider with justice and fairness the problems arising out of this controversy. We visited Madras prepared to enter into a full and careful consideration of this question, but unfortunately we were deprived of the opportunity of hearing those leaders of the non-Brahmans who claim a separate electorate and of testing their views by oral examination, since they informed us that they refused to appear before the Committee. Communications received from Dr Nair and other leaders will be found in appendix XV. We desire to record that, whatever the merits or demerits of the controversy might be, it was our earnest wish to use our good offices to find some method of composing these important differences which are disturbing the political life of the presidency. We should have been glad, even perhaps at the cost of the disregard of sound constitutional forms, to have attempted some acceptable arrangement. The refusal of these leaders to appear at our enquiry deprived us of all power of intervention and made a settlement by consent impossible.

So far as we have been able to ascertain, the case for the non-Brahmans rests on the assertion that the Brahmans, though numerically a small community, occupy, not only for religious and social reasons but also on account of their exceptional educational qualifications, a position of preponderating influence. It is also urged that Brahmans have a share, disproportionate to their numbers, of positions in the service of Government and in the legal profession. The non-Brahmans claim that they need protection against the overpowering, though not necessarily illegitimate, influence of a class possessing so marked a degree of religious and social prestige.

The possible solutions of the problem, which emerge from our consideration of the question, may be described as follows : The first is the constitution of a non-Brahman communal electorate, comprising all classes of Hindus other than Brahmans. This solution, as we understand from their written publications, commends itself to a considerable section of the political leaders of the non-Brahmans. A second alternative would be to constitute large multiple constituencies, and to reserve a certain proportion of seats for non-Brahman candidates. A further proposal producing much the same result, though with a variation of figures, is to limit the number of Brahman candidates to be returned by such constituencies, and this course was recommended to us by another section of the non-Brahman community.

Apparently the reason why any solution on the basis of reservation of seats would not be acceptable to the first section of non-Brahman leaders is that they mistrust candidates, though belonging to their own class, in whose election Brahmans would take a part, however limited may be the number of their votes. We for our part feel unable to recommend the constitution of a separate communal electorate for non-Brahmans. Whatever value and propriety such a measure may have for protecting a minority against the pressure of other communities or interests, it would be unreasonable to adopt this expedient for protecting a community which has an overwhelming electoral strength. In the Madras presidency the non-Brahmans (omitting the depressed or untouchable classes) outnumber the Brahmans in the proportion of about 22 to 1. We have made an estimate of the relative proportions of these communities in regard to the

number of voters on the franchise recommended for the presidency, and we are, we think, well within the mark in estimating that the non-Brahman (again using the expression in the sense indicated above) exceed the Brahman electors in the proportion of at least 4 to 1. We cannot but think that, if the capacity already devoted to politics among the non-Brahmans were utilized in organizing this great majority, the non-Brahmans would in no long space of time find that such a preponderance of votes would make itself effectually felt despite the power and influence of the Brahmans. The formation of a separate communal electorate for non-Brahmans would have the effect of placing the Brahmans in a separate communal electorate of their own, a position in which we are not prepared to place a community against its will. There thus remains only the proposal for the reservation of a considerable number of seats for non-Brahmans in plural member constituencies. But such evidence as we were able to obtain went to show that, whilst such a proposal might be accepted by the Brahmans if it were the price of an enduring peace and might, if the number of seats were substantial, be accepted by one section of the non-Brahmans, the leaders of the other section were prepared neither to submit to such a solution nor to accept it as a settlement of the controversy. In these circumstances we felt it our duty to deal with the electoral position on lines corresponding to those framed for other parts of India, and in our recommendations we accordingly make no difference between the Brahmans and the non-Brahmans.

On this subject we feel constrained to add this final suggestion. It may be that, after statutory effect has been given to our proposals, His Majesty's Government may be willing to afford the parties to this controversy an opportunity, before the electoral machinery is completed, of agreeing upon some solution of the question, *e.g.*, the provision of plural member constituencies and of a certain proportion of guaranteed non-Brahman seats. We venture, at the risk of travelling outside the terms of our reference, to suggest that, if any scheme is brought forward by the leaders of the non-Brahmans which appears likely to afford a reasonable prospect of a speedy and equitable settlement, an opportunity might be allowed to Your Excellency in Council (possibly under the advice of some small commission or committee) to

introduce into the electoral system for this presidency any modifications on these lines that may seem likely to lay the controversy finally to rest.

#### REPRESENTATION OF SPECIAL INTERESTS.

21. *Zamindars and Landholders*.—We turn to an important but less contentious problem, the representation of special interests. In considering the claims of the landholding class to special treatment, we recognise the considerations put forward in paragraphs 147 and 148 of the Joint Report regarding the position of the landed aristocracy and of the smaller landed gentry. Where we have found a genuine landed aristocracy forming a distinct class, of which the taluqdars of Oudh form perhaps the most conspicuous example, we have had no hesitation in maintaining the privilege now held by them of special representation in the legislative councils through electorates composed of their own class. Thus, in addition to the taluqdars of Oudh, we have recommended special representation to the zamindars of Bengal, Madras and Bihar and Orissa, the sardars of Gujrat and the Deccan and the jagirdars of Sind (in the Bombay presidency). It may justifiably be claimed that in each case these constitute a special class, with clearly defined interests distinguishable from those of the smaller landholders. We have at the same time continued the special representation enjoyed by a class of somewhat different but still clearly defined status, namely, the large landholders of Madras, Agra, the Central Provinces, and Assam, and have further, pursuant to the policy of guaranteeing adequate representation to landholding interests, acceded to the strong recommendation of the Punjab government for the grant of special seats to the larger landholders in the Punjab, a privilege which they do not at present enjoy. The qualifications of electors will in each case be residence in the constituency and a high payment of land revenue or local rates; though we have, in addition, maintained as a qualification the possession by landholders of certain high titles conferred or recognised by government.

22. *University*.—We recommend the maintenance of the existing arrangement by which the interests of university education are represented in the provincial legislative

councils by a member elected by the Senate and Fellows of the university of the province. We have, in addition, made provision for the newly constituted university of Patna, and for the universities of Nagpur and Dacca when they are duly constituted.

23. *Commerce and Industry*.—The Joint Report (paragraph 232) recognises that commercial and industrial interests should receive separate representation, and this view was supported almost without exception by the evidence received by us. These special interests are now represented in the provincial legislative councils by members returned by chambers of commerce and by trades, planting, mining and millowners' associations. These are in the main, though not exclusively, representative of European commercial interests. The special interests of Indian commerce are at present represented by election only in the legislative council of Bombay, where one member is elected by the Millowners' Associations, and one by associations composed of merchants and traders. We are satisfied that the method of representation through associations has worked well in the past, and should be continued in the future. Where, therefore, we have found associations which have been proved to our satisfaction to be fully representative of the various interests concerned, we recommend that election to the special seats provided by us for commerce and industry should be made by their members. In the three provinces of the Punjab, Central Provinces and Assam, where there is no organized association of sufficient importance for the representation of Indian commerce, we recommend a special electorate consisting of factory-owners and the representatives of registered companies. It will be noted that the amount of representation given to European commerce in Bengal is larger than in other provinces; this step we hold to be justified by the importance of European commerce in that province, and this view is supported by a unanimous resolution of the non-official members of the present legislative council in favour of maintaining the existing proportion of elected European seats in the council. It will be further noted that we have given increased representation to Indian commerce, with the result that special representation of this interest is provided in seven out of the eight provinces. We have recommended safeguards against the abuse of the method of election through associations by

proposing that the regulations for elections should in each case be approved by the Governor in Council, who will further have authority to modify the system of representation in order to meet any alteration in the position or constitution of the different associations. The regulations should contain provisions for ensuring that all electors have a place of business within the province.

24. *Representation by nomination.*—In assigning the number of seats in each council to which non-official representatives may be appointed by nomination, we have been guided by the existence of important classes or interests which could not be expected to obtain representation by any practicable system of election. Thus we have been driven to the expedient of nomination for the representation of the depressed classes, because in no case did we find it possible to provide an electorate on any satisfactory system of franchise. We have indicated in each province the special interests which we consider should receive such representation (including Labour, where the industrial conditions seem likely to give rise to labour problems), it will be understood, however, that our lists are intended as a guide to the Governor rather than as a direction to be followed in framing the regulations. Our proposals contemplate a very sparing use of nomination; and we have provided only a narrow margin to enable the Governor to correct any glaring inequalities in election or to secure the presence on the council of any person of position or political experience who may have failed to secure election.

25. *Official Representation.*—In our recommendations regarding official seats we have been guided entirely by the necessity of providing the number of officials required for constituting the Grand Committee in accordance with paragraph 232 of the Joint Report. We have assumed that the standard strength of the Grand Committee will be 40 per cent. of the council. We feel bound to add that practical inconvenience may arise, especially in the smaller provinces, from the necessity for the attendance of so many officials at the council proceedings. If the proportion were reduced from 40 to 30 per cent., which could (we venture to suggest) be effected without any material change of principle, the number of officials might be diminished, and the inconvenience proportionately reduced.

## QUALIFICATIONS OF CANDIDATES.

26. *British Subjects.*—In dealing with the qualifications of candidates for election as members of the provincial councils, we have taken the existing regulations as our guide, but have relaxed them in several material points. Thus while maintaining the disqualification of persons who are not British subjects, we have recommended that this bar should not apply to the subjects of Native States in India. There are many persons who, though technically subjects of Native States, reside in British territory, with which their interests are identified.

27. *Dismissal from Government Service.*—We gave much consideration to the question whether dismissal from Government service should in itself constitute a disqualification. The majority of us are of opinion that such dismissal should constitute a disqualification if it has taken place in circumstances which, in the opinion of the Governor in Council, involve moral turpitude, and that it should be further provided that this bar may be removed by the same authority. They hold that a regulation of this nature is essential in the interest of the good reputation of the new councils. We have, however, to record that this recommendation does not command the assent of Lord Southborough, Mr. Surendranath Banerjea and Mr. Srinivasa Sastri, who consider it improper to limit the choice of the electorate by imposing a disqualification based on the decision of an executive authority.

28. *Imprisonment.*—The existing regulations debar from candidature all persons sentenced by a criminal court to imprisonment for an offence punishable with imprisonment for a term exceeding six months, or who have been ordered to find security for good behaviour. We have considered it sufficient to restrict the disqualification to persons who have been sentenced by a criminal court to imprisonment in circumstances which, in the opinion of the Governor in Council, involve moral turpitude, and have, as in the previous case, provided that the same authority may remove the disqualification.

29. *Residence.*—A problem of greater difficulty is presented by the question whether a candidate should be permitted to contest a constituency in which he has no place of



residence. The present regulations provide that in all Muhammadan, local board, municipal and landholders' constituencies, the candidate must have a place of residence within the constituency. The evidence presented to us on this point was by no means unanimous. Associations and individuals representing what may be termed the more progressive element in Indian politics were definite in their view that there is no justification for restricting the choice of the electors in this respect, and that insistence on such a regulation might, by depriving the new councils of the services of men of experience and capacity, impair the success of the reforms now being inaugurated. The point was also emphasised that a residential qualification is easy of evasion in the absence of an undesirably restrictive definition. Some of the local governments, namely, those of the United Provinces, Bihar and Orissa and Assam, did not press for the insertion of this qualification. On the other hand, the local governments of Bengal, Bombay, Madras, and the Punjab held that it would be detrimental to the interests of a large proportion of the new electorate to admit as candidates persons who were not resident in the areas they sought to represent. This view received support from some non-official witnesses, particularly in the Central Provinces, and very wide support in the Punjab from individual witnesses and associations representing rural interests. It was pointed out to us that one object of constituting territorial electorates is to encourage the candidature of persons with knowledge of local interests and actually representative of such interests, and that the chance of securing such candidates from among the rural population, hitherto unversed in politics, would be impaired by the competition of candidates from outside. Much of the educative effect of the franchise would thus be lost, and the representative character of the councils impaired. Our attention was further directed to the remarks on this subject in paragraph 84 of the Joint Report which contemplate the possible necessity of prescribing definite qualifications for candidates for rural seats.

We have found no difficulty in maintaining the existing regulation as regards special constituencies, such as those provided for landholders. With regard to the general and communal constituencies, however, the majority of us, although on principle opposed to such a restriction anywhere resolved, on a consideration of the evidence, to abandon

uniformity, and to impose the restriction in the provinces of Bombay, the Punjab and the Central Provinces, but not in the remaining provinces. The minority (Sir Frank Sly, Mr. Hailey and Mr. Hogg) desire that the restriction should be imposed in all provinces, and would be prepared, if necessary, to face a definition of the qualification which would secure that the candidate should be actually a resident of the constituency.

#### COMPOSITION OF PROVINCIAL LEGISLATIVE COUNCILS.

30. *Size of provincial legislative councils*—The preceding portion of this report will explain the principles which have guided us in framing the constitution of the legislative council of each province. In our recommendations as to the number of members in the different councils, we have not acted on any presumption as to the total strength suitable to each province, nor have we striven to attain a rigid uniformity between the provinces, but have endeavoured to provide adequate representation for each class and interest concerned, with due regard to the maintenance of the district as a territorial unit. Social and economic conditions vary widely from province to province, and our proposals must not be judged in the light of the arithmetical proportion disclosed between the number of seats and the size of the population in the different areas with which we have had to deal. Our detailed recommendations, which will be found in the attached appendices, are summarized in the following table :—

Province.	General	Communal.	Landholders.	University.	Commerce and Industry and Planting	Representatives by nomination	Officials.	Total.
Madras . . . . .	61	18	7	1	6	6	19	118
Bombay . . . . .	46	29	3	1	8	6	18	111
Bengal . . . . .	41	37	5	2	15	5	20	125
United Provinces . . . . .	57	28	6	1	3	5	18	118
Punjab . . . . .	18	36	4	1	3	6	16	83
Bihar and Orissa . . . . .	46	18	5	1	3	9	16	98
Central Provinces . . . . .	40	7	3	1	3	5	12	70
Assam . . . . .	19	12	2	...	6	5	9	53

These numbers are exclusive of the two experts (in the case of Assam one), who may be added to the Council by the Governor from time to time when required.

## INDIAN LEGISLATIVE ASSEMBLY.

## COMPOSITION OF THE ASSEMBLY.

31. *Composition of existing Council.*—The present legislative council of the Governor-General consists (in addition to the seven members of his Executive Council) of sixty additional members, of whom twenty-seven are elected and thirty-three nominated, making a total of 69, inclusive of the Governor-General and the Head of the province in which the council assembles. Of the latter not more than twenty-eight may be officials. Details of the composition of the elected portion of the council are given in the attached appendix ; it is sufficient to state here that of the total of twenty-seven, thirteen are elected by the non-official members of the different provincial legislative councils, giving an average of 16 members to elect each representative ; six by landholders (all provinces save the Punjab and Assam being thus represented) ; one representative by the Muhammadan landholders of the United Provinces alternately with the Muhammadans of Bengal, five by Muhammadans in as many provinces, in addition to the member returned at the alternate election just mentioned ; and two by European Chambers of Commerce. The landholders' electorate is a restricted one, on a higher franchise qualification than that in force for the elections to the provincial councils. Where Muhammadan representatives are elected to the council the election is (except in the case of Bombay) direct, on a higher franchise than that in force for election to the provincial legislative councils, giving an average of 473 electors for each seat in the four provinces in which it applies.

32. *Proposals of the Joint Report.*—The Joint Report (paragraphs 273 to 275) contemplates an Indian Legislative Assembly of about 100 members, of whom two-thirds will be elected and one-third nominated by the Governor-General, of which third again not less than one-third will be non-officials selected with the object of representing minority or special interests. It recognizes the necessity for the communal representation of Muhammadans in most provinces, and also of Sikhs in the Punjab. The allocation suggested for the elected members is eleven each to the three presidencies, ten

to the United Provinces, seven each to the Punjab and Bihar and Orissa, five to the Central Provinces, three to Burma and two to Assam ; to which is added one for the Delhi Province. It further contemplates that, within these numbers, special representation should be found for European and Indian commerce, and the large landlords

33. *Our Proposals.*—We have found it difficult to provide for these various interests, and for the necessary communal representation of Muhammadans and Sikhs, in addition to the representation of the general constituencies, without disturbing the proportion of seats suggested for each province or, in the alternative, increasing the total number of elected seats. We have, after a full consideration of this somewhat complex problem, decided to adopt the latter course, and to recommend an addition to the elected strength of the council, bringing the total to 80 instead of 68. We have further thought it justifiable, while preserving generally the proportion of representation suggested between provinces, to rank the United Provinces with Madras and Bombay. Its population exceeds that of any other province, and its financial contribution to the general Imperial revenues as proposed in paragraph 206 of the Joint Report is second only to that suggested for Madras. We would have desired on general grounds to maintain the equality of representation of the three presidencies, to which we attach importance, but in view of the large amount of special representation necessary in Bengal, we propose to allot one additional seat to that presidency in order to secure sufficient representation of general and communal interests. In allocating the number of Muhammadan seats we have been guided by the considerations set out in paragraph 15 of this report, and have also borne in mind that the number of Muhammadans, elected and nominated, in the present council is 11 out of 31 Indian non-official members. The increase in the number of elected seats will involve a council of the total strength of 120, or, including the Governor-General, 121. The details of our recommendations are given in appendix IX, and are summarized in the table below :—

# REPORT OF THE FRANCHISE COMMITTEE.

## ELECTED MEMBERS.

PROVINCE.	General.	COMMUNAL		LANDHOLDERS			European Com- merce	Com- Planting	Indian Com- merce	TOTAL.
		Muham- madan	Sikh	Non-Mu- hammadan.	Muham- madan.	Sikh				
Madras ... ..	7	2	...	1	...	...	1	1	12	
Bombay ... ..	4	3	...	1	1	...	1	2	13	
Bengal ... ..	5	3	...	1	1	...	2	1	13	
United Provinces ..	6	3	...	1	1	...	1	...	12	
Punjab ... ..	2	4	1	...	1	1	...	...	9	
Bihar and Orissa ..	6	2	...	1	...	...	...	...	9	
Central Provinces .	4	1	...	...	...	...	...	...	5	
Assam ... ..	1	1	...	...	...	...	1	...	3	
Delhi ... ..	1	...	...	...	...	...	...	...	1	
Reserved for Burma ...										4
TOTAL ...										80

To these will be added fourteen representatives appointed by nomination and twenty-six officials (including seven ex-officio members). In view of the remarks contained in paragraph 198 of the Joint Report, we have felt ourselves precluded from proposing any precise allocation of the four seats reserved for Burma. It has been suggested to us that provision might suitably be made for one seat to represent Muhammadans, and one the Rangoon Chamber of Commerce, we content ourselves in the circumstances with recording the suggestions.

## METHODS OF REPRESENTATION.

34. *Direct and Indirect election.*—The question of the most suitable method of securing representation is discussed in paragraph 273 of the Joint Report. It is recognized that direct election is practicable in the case of special constituencies, such as those representing landholders or commercial associations; but, while indicating a preference for direct election in general constituencies, the report emphasises the

difficulty of giving practical effect to this measure. We gave full and anxious consideration to this difficult problem. There are three main alternatives. The first is to adopt the franchise recommended by us for the provincial legislative councils, dividing the electorates for these councils into the number of constituencies required for the Indian Legislative Assembly. If we had felt it necessary to recommend a high franchise qualification for the provincial councils, it is possible that the electorate for the Indian Legislative Assembly would not have been of unmanageable size; but if the franchise proposals made by us are adopted, each constituency for the latter assembly would consist approximately of 4 millions of population with 90,000 electors, and the area of each constituency would be of corresponding magnitude. Whether such an arrangement may prove practicable in the future, it is difficult to foretell, but we are of opinion that for the present it is impossible to recommend it. It would involve a great strain on the large number of inexperienced electors who will now for the first time receive the suffrage, and would impose a very heavy burden on the agency charged with the organization of the new electoral machinery.

Some of the difficulties above indicated could, no doubt, be obviated by adopting as an alternative, the proposal—strongly urged by many non-official witnesses and numerous political associations—to prepare an electoral roll for the Indian Legislative Assembly on a substantially higher franchise than that proposed by us for the provincial councils. It was pointed out to us that a direct system of election to the Imperial Council by Muhammadans was in force in the provinces of Madras, Bengal, the United Provinces and Bihar and Orissa, but it was generally agreed that the present franchise was much too restricted to form a suitable basis. The average number of electors would be only 184 for each seat. A somewhat wider electorate exercises the right of election to the Muhammadan seats in the provincial legislative councils of these provinces and Bombay, and the suggestion was made to us that this might be adopted for elections to the Indian Legislative Assembly. This would give an average of 1,118 electors for each seat. Besides the very restricted nature of this franchise, a further objection lies in the composition of the electorate. It is based on a high property qualification varying considerably from province to province,

but the attempt to give it a somewhat more liberal aspect has led to the inclusion of a striking variety of social, vocational, titular and literary qualifications, unsuitable in our opinion as a basis for the franchise even in provincial council elections. In spite of these additions, an electorate of this type would be dominated by landholders, who would also receive separate representation in their special constituencies. But our objection to this proposal is not limited to the difficulty of suggesting an improved franchise. To enfranchise a large number of persons in the elections of the provincial legislative councils, and at the same time to confine representation in the All-India assembly to a small upper class, appears to us not only illogical but politically undesirable. A further difficulty, though one possibly of less importance, is that it involves the creation of a second electoral roll throughout India at a moment when the preparation of the provincial electoral rolls will strain severely the resources of the local governments. The latter, without exception, after full consideration of the possible alternatives, recommended indirect election. We have thus found ourselves driven (a possibility foreseen in the Joint Report) to the only remaining alternative, namely, indirect election for all general and communal seats by the members of the provincial legislative councils. We appreciate the objections to this method. The danger of entrusting the election of All-India representatives to a small number of electors is too obvious to need elaboration. It must, however, be borne in mind that the non-official members of the provincial councils will themselves, shortly before they are called upon to exercise this function, have been returned by a popular vote, and that they will perform this important duty in a representative capacity. We trust that, in the progress of time, a growing sense of political organization will enable indirect election to be superseded by some direct method, but for the present we see no alternative but to face the defects inherent in the indirect system.

If our proposal is accepted, the minimum numbers of electors to the seats in the Indian Legislative Assembly representative of general and communal interests will be as shown in the table below. To these will be added in practice the non-official nominated members.

THE INDIAN CONSTITUTION.

Province.	GENERAL.		MUHAMMADANS.		SIKHS.		TOTAL.	
	Number of seats.	Number of electors.	Number of seats.	Number of electors.	Number of seats.	Number of electors.	Number of seats.	Number of electors.
Madras . . . . .	7	80	2	13	...	...	9	93
Bombay . . . . .	4	60	3	27	...	...	7	87
Bengal . . . . .	5	66	3	34	...	...	8	100
United Provinces . . . . .	6	68	3	27	...	...	9	95
Punjab . . . . .	2	22	4	30	1	9	7	61
Bihar and Orissa . . . . .	6	56	2	17	...	...	8	73
Central Provinces . . . . .	4	46	1	7	...	...	5	53
Assam . . . . .	1	27	1	12	...	...	2	39

35. *Method of election to seats representing special interests.*—The representation of special interests can, as anticipated in paragraph 273 of the Joint Report, be suitably carried out by direct election. We propose accordingly that the persons entered in the electoral rolls prepared for the provincial council elections shall elect to the landholders' seats in the Indian Legislative Assembly. There appears to be no reason for creating a second electorate, with higher franchise qualifications, within these comparatively small bodies of electors. Election to the commerce seats will be by the members of certain chambers of commerce and similar bodies. The details of the electorate for each constituency will be found in appendix IX attached.

36. *Qualifications of candidates.*—We consider that candidature for the seats to which election is made by the members of the provincial legislative councils should not be restricted to persons who are already members of those councils, but should be extended to all persons who are qualified for election to the council of the province which they desire to represent. The difficulty felt by some of our members in regard to the qualification of residence (paragraph 29) will not arise in this case; the regulations should only provide that the candidate should be an elector in some constituency within the province.



As regards election to seats representing special interests, we consider that candidates should have the qualifications entitling them to stand for similar seats in the provincial councils, residence in the province (or, in the case of seats representing commerce, possession of a place of business within the province) being a necessary qualification in each case.

37. *System of voting.*—In the elections for seats to which election is made by members of the provincial councils, we propose to adopt the system of cumulative voting. This is at present in force in similar elections to the Imperial Legislative Council, and we see good grounds for retaining it.

38. *Representatives by nomination.*—In our recommendation as to the number of representatives by nomination, we have observed the proportion laid down in paragraph 273 of the Joint Report. In view of the observations made in paragraph 275 of the same report, we have attempted no allocation of these seats. One of our members (Mr. Hogg), however, desires to express a strong opinion that at least one member should be nominated to represent the interests, other than commercial and industrial, of the European community. It has further been suggested to us that a place might be found among the nominations for non-official representatives from the North-West Frontier Province and Baluchistan (*vide* paragraph 198 of the Joint Report).

## COUNCIL OF STATE.

### COMPOSITION OF THE COUNCIL.

39. *Proposals of the Joint Report.*—Proposals regarding the Council of State are contained in paragraph 277 of the Joint Report. These proposals contemplate a council of 50 members, exclusive of the Governor-General, consisting of not more than 25 officials including the members of the Executive Council; 4 non-officials nominated by the Governor-General; and 21 elected members. Of the elected members it is suggested that 15 shall be chosen by the non-official members of the provincial legislative councils, each council returning two members, save the councils of Burma, the Central Provinces and Assam, which are to return one each.

## THE INDIAN CONSTITUTION.

The remaining six seats are intended to supplement the representation which the Muhammadans and the landed classes would otherwise secure, and also to provide for the representation of chambers of commerce. It is proposed that each of the three latter interests should return two members directly to the Council of State.

40. *Our proposals.*—We have experienced great difficulty in framing a scheme which would provide for the different interests mentioned, while preserving the proportion of seats between the provinces. We have therefore ventured, at the risk of going outside our terms of reference, to recommend an increase from 21 to 24 in the number of elected seats. This increase will involve a total strength of 56 or, including the Governor-General, 57. The details of the constitution which we propose are given in appendix X, and the proposals for the elected seats may be summarized as follows :—

Province.	General	Muham- madan.	Sikh	Land- holders.	TOTAL.
Madras . . . . .	2	1	...	..	3
Bombay . . . . .	2	1	...	..	3
Bengal ... ..	2	1	...	$\frac{1}{2}$	$3\frac{1}{2}$
United Provinces ...	1	1	..	1	3
Punjab ... ..	1	1	1	...	3
Bihar and Orissa ...	1	1	..	$\frac{1}{2}$	$2\frac{1}{2}$
Central Provinces ...	1	$\frac{1}{2}$	...	..	$1\frac{1}{2}$
Assam ... ..	1	$\frac{1}{2}$	...	...	$1\frac{1}{2}$
Total ...	11	7	1	2	21

Add for European chambers of commerce . .	2
Reserved for Burma ... ..	1
TOTAL . .	24

41. *Method of representation.*—In the Joint Report it is proposed that the election should be by the members of the provincial legislative councils, save in the case of six seats (for Muhammadans, landholders and chambers of commerce) to which direct election is contemplated. We have already explained the difficulties which have made it impossible for us to recommend any method of direct election to the Indian Legislative Assembly. We have received no practical sug-

gestion, nor have we succeeded in formulating any method, for obtaining direct election by Muhammadans (who number in the area included in our schemes over 54 millions) to the two seats specifically reserved for them in the Council of State. It would be possible to arrange for direct election to the two landholders' seats in the Council of State by the landholders to whom, in the various provinces, we propose to give the privilege of electing landholders' representatives in the provincial councils. We shrink, however, from adding one more election to the two elections (to the provincial councils and to the Indian Legislative Assembly) in which the landholders will have to participate. It appears to us that the least inconvenient course will be to provide, in all cases except the two seats reserved for European commerce, for election to the Council of State by the non-official members of the respective provincial councils, and we have framed our scheme on these lines. We have not overlooked the fact that our proposals for election to the Indian Legislative Assembly and to the Council of State involve two elections by the members of the provincial legislative councils, but we are unable to devise any alternative system which is not open to graver objection.

42. *Qualifications of candidates.*—We think that candidature to the Council of State should not be confined to members of the Indian Legislative Assembly and provincial legislative councils, as we see great advantages in the selection of suitable representatives outside those bodies. We therefore recommend that it should be left to the electors to choose any person qualified to be a member of a provincial legislative council.

We have the honour to be  
Your Excellency's most obedient servants,  
SOUTHBOROUGH,

*President.*

F. G. SLY,

*Deputy Chairman.*

S. AFTAB.

W. M. HAILEY.

S. N. BANERJEA.

M. N. HOGG.

V. S. SRINIVASAN.

*Delhi, 22nd February 1919.*

## XI. Report of the Committee on Division of Functions.

To

HIS EXCELLENCY THE GOVERNOR-GENERAL  
IN COUNCIL.

YOUR EXCELLENCY,

IN accordance with the directions of the Right Hon'ble the Secretary of State for India we have the honour to forward to Your Excellency, for submission to the Secretary of State, our report on questions connected with the division of functions between the central and provincial Governments, and in the provincial Governments between the Executive Council and Ministers.

2. The terms of reference to us were as follows.—

- I. The Committee will be guided by the principles enumerated in paragraphs 212, 213, 238, 239 and 240 and will also take into consideration the illustrative lists contained in appendix II of the Report.
- II. With a view to giving the provinces the largest measure of independence, legislative, administrative and financial, of the Government of India, which is compatible with the due discharge by the latter of their own responsibilities, the Committee will advise as to—
  - (1) the functions which should be discharged by the provincial Governments (paragraph 238),
  - (2) the powers of control which should be retained by the Government of India in relation to the provincial subjects, in order to secure the discharge of their own responsibilities, and the grounds on which and the manner in which these powers should be exercised (paragraphs 213 and 240).
- III. The Committee will further advise as to :—
  - (1) which of the functions to be discharged by provincial Governments can be transferred at the outset in each province to the charge of Ministers (paragraph 238);

- (2) the powers which should be exercised by the Governor in Council in relation to transferred subjects and the grounds on which and the manner in which these powers should be exercised (paragraph 240).
3. Our Report falls into the following sections :—
- Section I.—Introductory.
- Section II.—Provincial Functions and Relations between the Provinces and the Government of India.
- Part 1.—Provincial Functions.
- Part 2.—Powers of control by the Government of India in relation to Provincial Subjects.
- Part 3.—Lists of All-India and Provincial Subjects.
- Section III.—Transfer of Functions to the charge of Ministers, and Powers of Governor in Council in relation to Transferred Subjects.
- Part 1.—Transfer of Functions.
- Part 2.—Powers of the Governor in Council in relation to Transferred Subjects.
- Part 3.—List of Transferred Subjects.
- Section IV.—Public Services.
- Section V.—Finance
- Section VI.—Conclusion

It should be noted that it has been found more convenient to treat the various questions arising under both the second and third clauses of the reference with regard to the Public Services and Finance in Sections specially devoted to those two subjects.

### Section I.—Introductory

4. Our first meeting was held at Simla on the 8th November, and after preliminary discussions, including informal interviews with two Members of the Government of India, there and at Delhi, we started on our tour through the country on the 16th. We visited Patna, Lucknow, Lahore, Nagpur and Calcutta before Christmas, and examined the official and non-official witnesses from Bihar and

Orissa, the United Provinces, the Punjab, the Central Provinces and Berar and Assam. After Christmas we re-assembled in Calcutta on January 2nd, and heard the Bengal evidence. From Calcutta we moved on to Madras, and thence to Bombay, returning to Delhi on February 3rd. Burma we did not visit, as it was excluded from the scope of our enquiries. Besides hearing witnesses from the various provinces we were able to examine several officers who serve directly under the Government of India. The final discussions were held after our return to Delhi, between the 3rd and the 26th February. On the latter date our Report was signed.

While on tour, we held sittings on 68 days in all, and we sat as a rule between six and seven hours a day. The sittings and the examination of witnesses were conducted privately. The names of the witnesses and (in the case of representative witnesses) the names of the associations which they represented are set forth in Annexure no. VII. A record of their evidence, together with a record of the material prepared for our assistance by the provincial Governments, has been deposited with the Home Department of the Government of India. Reference is made in later paragraphs to the Memoranda received from the Government of India and the proposals formulated by local Governments.

5. At the outset we suffered a great loss owing to the death of our colleague, the Hon'ble Mr. H. F. W. Gillman, C.S.I., I.C.S., Member of the Executive Council of the Governor of Madras. We realise that his wide administrative experience would have been of the greatest help to us. The Madras officer (Mr. M. E. Couchman) who was selected to take his place was unable to join us until we had completed our tour in Bihar and Orissa, the United Provinces and the Punjab.

6. In examining the case of each province we received the help of two added members appointed by the respective local Governments with a view to the adequate representation of local conditions. Except in the case of Bengal, where the gentlemen nominated by Government were both non-officials, one added member in each province was an official and the other a non-official. We desire to take this opportunity of expressing our obligations to our added members (whose names are given in Annexure VI) for the great assistance they have given us. Not only did they take a share in the examination

of witnesses and in the deliberations on the peculiar circumstances of their own provinces, but in several cases they also supplied us with valuable written statements of their views. We further received important assistance from Sir Piabhashankar Pattani, K.C.I.E., and Mr. G. Rainy, C.I.E., I.C.S., who were appointed to join our deliberations at Delhi when we were examining questions affecting the Government of India.

7. It is laid down in our reference that we are to be guided by the principles enunciated in certain paragraphs of the Joint Report of Your Excellency and the Secretary of State on Indian Constitutional Reforms which have a special bearing upon the questions referred to us. The paragraphs in question are 212, 213, 238, 239 and 240. We have given careful consideration to these paragraphs, and frequent references to them will be found in our Report. There are many other passages of the Joint Report which directly affect the questions with which we have to deal, and our Report must be read with reference to, and in the light of, the Joint Report as a whole and the constitutional scheme of which it lays down the general lines.

8. Some preliminary definition of terms is required. We have used the word 'Imperial' in reference only to His Majesty's Government and the Parliament of the United Kingdom. We have used the term 'Indian' for the purpose of references to the Government of India and the Indian legislature, as distinct from the provincial Governments and legislatures. It has been found convenient to state many of our proposals in what may perhaps be described as statutory form, but we wish it to be understood that we have done this for the sake only of clear statement, and not with a view to assuming the functions of the Parliamentary draftsman or to deciding questions as to the precise legal machinery to be employed for giving effect to our proposals.

## **Section II.—Provincial Functions and Relations between the Provinces and the Government of India.**

### **PART I.—PROVINCIAL FUNCTIONS.**

9. Our duty, as stated in clause II of the reference, is to advise as to the functions of the provincial Governments and as to the control to be retained by the Government of India

in relation to provincial subjects 'in order to secure the discharge of their own responsibilities.' For the purpose of defining the relations between the central and provincial Governments, as we are thus required to do, we have found it essential to examine not only what subjects should be comprised in the list of provincial subjects, but also what are the subjects for which the responsibility must remain with the Government of India. It has thus become necessary to prepare two lists showing —

- (i) All-India subjects,
- (ii) Provincial subjects.

These lists are attached to this Section of the Report.

10. In the preparation of these lists we have been guided by paragraph 238 of the Joint Report from which the following passage may be quoted :—

"The Committee's first business will be to consider what are the services to be appropriated to the provinces, all others remaining with the Government of India. We suggest that it will find that some matters are of wholly provincial concern, and that others are primarily provincial, but that in respect of them some statutory restrictions upon the discretion of provincial Governments may be necessary. Other matters again may be provincial in character so far as administration goes, while there may be good reasons for keeping the right of legislation in respect of them in the hands of the Government of India."

11. In considering the questions arising in connection with the preparation of these lists, we have had the assistance of a Memorandum received from the Government of India on the general subject of Division of Functions, which forms an annexure to this Report (Annexure II). The following passages may be quoted from this Memorandum :—

"7. There are certain subjects which are at present under the direct administration of the Government of India. The Government of India maintain separate staffs for their administration and the provincial Governments have no share in it. The category is easily recognisable, and for the most part there will not be much room for doubt as to the subjects to be included in it. At the other end of the line are matters of predominantly local interest which, however much conditions may vary between provinces, will generally speaking be recognised as proper subjects for provincialisation.

"8. Between these extreme categories, however, lies a large indeterminate field which requires further examination before the principles determining its classification can be settled. It comprises all the matters in which the Government of India at present retain ultimate control, legis-



lative and administrative, but in practice share the actual administration in varying degrees with the provincial Governments. In many cases the extent of delegation practised is already very wide. The criterion which the Government of India apply to these is whether in any given case the provincial Governments are to be strictly the agents of the Government of India, or are to have (subject to what is said below as to the reservation of powers of intervention) acknowledged authority of their own. In applying this criterion the main determining factor will be, not the degree of delegation already practised, which may depend on mere convenience, but the consideration whether the interests of India as a whole (or at all events interests larger than those of one province) or on the other hand the interests of the province essentially preponderate.

"The point is that delegation to an agent may be already extensive, but that circumstance should not obscure the fact of agency or lead to the agent being regarded as having inherent powers of his own."

The Memorandum proceeds to state that applying the principle above laid down "the Government of India hold that where extra-provincial interests predominate the subject should be treated as central," while "on the other hand, all subjects in which the interests of the provinces essentially predominate should be provincial, and in respect of these the provincial Governments will have acknowledged authority of their own."

12. We recognise the distinction above drawn between the two classes of functions discharged by provincial Governments—(1) Agency functions in relation to All-India subjects and (2) Provincial functions properly so called. The distinguishing feature of the work done in discharge of agency functions is that it relates to subjects in which All-India interests so far predominate that full ultimate control must remain with the Government of India, and that, whatever the extent of the authority in such matters for the time being delegated by the Government of India to the provinces as their agents, it must always be open to the Government of India to vary the authority and, if need be, even to withdraw the authority altogether. Provincial functions relate to subjects in which, to use the words of the Government of India Memorandum, "the interests of the provinces essentially predominate," and in which provincial Governments are therefore to have "acknowledged authority of their own." We recognise the difficulty of stating the matter in more precise terms. Circumstances, and the experience gained in the working of the existing local Governments, have largely decided in practice what subjects must fall in the provincial class; but

the general subordination of local Governments to the Government of India under the terms of the Government of India Act, and centralization in finance, have in the past tended to obscure the actual dividing line between All-India and provincial subjects, which also governs the separation in the provinces of agency from provincial functions.

13. In considering what subjects should be classed as provincial subjects, we have, in accordance with the suggestion of paragraph 238, used the first illustrative list to the Report as the starting point for our deliberations. This list has also been treated by most provincial Governments as affording the basis for their own proposals. The Government of India have not themselves put forward any definite proposal as to how the classification of subjects should be worked out on the lines laid down in their Memorandum, and the provincial proposals under this head were mainly confined to discussing the limits of the authority to be exercised in future by the Government of India, in relation to the subjects included in this first illustrative list, and did not in any case include an attempt to make a general and complete classification as between the central and provincial Governments. It has therefore been left to us to attempt this task, on the basis of the general proposals contained in the Report, and of the material at our disposal, consisting of the Memoranda from the Government of India, the schemes and Memoranda of the different provincial Governments and the evidence which we have received. We are fully conscious of the difficulties of making such a complete classification of the functions of Government as these lists represent, and we put them forward with the reservations necessary in dealing with a subject so various and so complicated. Their purpose is to lay down the main lines of division. They will, no doubt require and receive careful examination by the different Governments concerned as regards their bearing on the detailed work of administration.

14. Certain broad considerations governing the preparation of the lists of All-India and provincial subjects have to be stated :—

- (1) We have proceeded on the basis that there is to be no such statutory demarcation of powers between the central and provincial legislatures as to leave

the validity of Acts passed to be challenged in the Courts, on the ground of their being in excess of the powers of the legislature by which they are passed. We do not propose any alteration in the essential feature of the existing system of legislation in British India, which is that, save for certain special powers entrusted to the Indian legislature under section 65 of the Government of India Act, the Indian legislature as regards British India, and each of the provincial legislatures as regards its own province, have in theory concurrent jurisdiction over the whole legislative field. In fact the powers of provincial legislatures are much restricted owing to the rule, depending in some cases on statute and in other cases on executive order, that provincial Bills require the previous sanction of the Governor-General or the Government of India before introduction, but the validity of a provincial Act duly passed and assented to cannot be challenged on the ground that previous sanction has not been given.

- (2) In accordance with the suggestion made in paragraph 238, many provincial subjects are stated in the provincial list to be "subject to Indian legislation" either in whole or in part. The effect of this limitation is—with regard to Indian powers, that legislation on that subject, in whole or in part, and any powers reserved thereunder to the Governor-General in Council are recognized as an All-India subject—and with regard to provincial powers, not that the province cannot legislate on the subject at all, but that, in so far as the limitation operates, it cannot legislate except with the previous sanction of the Governor-General.
- (3) In framing the lists we have treated as All-India subjects, and committed therefore to the Government of India and the Indian legislature, certain large general heads, such for instance as Commerce, and Laws regarding property, but have taken out of these, and allotted to the provinces, important sections, *e. g.*, in the case of the first,

Excise, and, in the case of the second, Laws regarding land tenure. As stated in the rules of interpretation applied to the lists, any matter included in the provincial list is, to the extent of such inclusion, to be deemed to be excluded from any All-India subject of which otherwise it would form part. Subjects not expressly included in either list are regarded as All-India subjects (All-India list, no. 40), but it is left open to the Governor-General in Council to add to the provincial list "matters of merely local or private interest within the province" (Provincial List, no. 47).

- (4) Experience elsewhere has abundantly shown the difficulties involved in working out such a scheme of classification and making it complete, and has proved how impossible it is to forecast beforehand the actual results in practice of the division made. It must, however, be remembered that in this case we are not attempting a division of powers which will be subject to test in the Courts, and we can therefore with greater confidence leave the effect of the division proposed to be worked out in the course of legislative and administrative practice in the light of accepted general principles. Our scheme has been devised on such a basis as to leave the way open for this process of development.

15. We have included in the lists of All-India and provincial subjects notes of an explanatory character, but the proposals made as to the division of functions between the Government of India and the provincial Governments in certain subjects involve some points of such importance as to require special mention here.

(1) *Education*.—We have included Education in the provincial list "subject to Indian legislation controlling the establishment and regulating the constitutions and functions of new universities," and have provided that among the classes of provincial legislation which the Governor will be required to reserve for the consideration of the Governor-General shall be legislation regulating the constitution and functions of any

university unless such legislation has been subject to previous sanction [ *vide* paragraph 36 (3) ]. The effect of these two proposals will be that (a) apart from powers conferred by future Indian legislation on the provinces, provincial legislation with regard to the establishment, constitution and functions of new universities will be subject to previous sanction, and (b) a provincial Legislative Council will be competent to legislate, subject to reservation but without previous sanction, for the purpose of amending the constitution and functions of any university now existing within the province. In recommending that legislation by a province as to the establishment, constitution and functions of a new university shall be subject to previous sanction, and that the control of legislation as to new universities shall thus, in effect, be placed in the hands of the Indian legislature, we have been influenced by the views of the Calcutta University Commission, which have been communicated to us in advance of the publication of the Commission's report. It is not for us to advise as to the form of such legislation, but we make our recommendation on the assumption that means will be found of giving this legislation such an elastic character as to facilitate university development according to the varying needs and conditions of the different provinces.

The special circumstances of Bengal, and the fact that the Calcutta University Commission have been enquiring into and are about to report on higher education in Bengal, render it necessary to make separate provisions regarding that province. If it is decided to give effect to the recommendations contained in the report of the Commission legislation will be required—

- (i) as to the constitution and functions of the University of Calcutta,
- (ii) as to the control of secondary education in Bengal, and the establishment of a Board of Intermediate and Secondary Education,
- (iii) as to the establishment, constitution and functions of the new University of Dacca.

The third point is already covered by the proposed provision for the control by the Indian legislature over the establishment and constitution of new universities, but, as regards the

other two points, we recommend that legislation in Bengal with regard to the Calcutta University and with regard to the control and organisation of secondary education, shall be subject to previous sanction for a period of five years from the date when the reforms scheme comes into operation. This will give time to the Indian legislature to pass, if it sees fit to do so, the legislation required to give effect to the Report of the Calcutta University Commission, and will secure such legislation against premature amendment.

(2) *Railways*.—As regards Railways we have been impressed with the evident strength of the desire in many provinces to develop light and feeder railways. There is a general feeling that such development is unduly hampered under existing conditions. This feeling is particularly strong in Madras, where several local authorities have given proof of their keenness on the subject by levying for years a cess for railways the construction of which has not even been sanctioned. We have tried therefore, while conserving the essential interests of the Railway Board as controller of the railway communications of India and guardian of the rights of existing railways, and the ultimate veto of the Government of India, to give to the provincial Legislative Councils a power of initiative in legislation which will give scope to local enterprise. We recommend that local authorities or private corporations should be allowed to introduce Bills for the construction of light and feeder railways in the provincial Councils. But we suggest that provision should be made by standing orders of each provincial Council requiring that, before any Bill providing for construction and management of a light or feeder railway is introduced in the Council, sufficient notice of the proposals contained in such Bill shall be given to the Railway Board, and to such other parties as may be prescribed, and that the Bill shall be referred after introduction to a Select Committee of the Council with power to hear evidence, and shall be dealt with by procedure similar to that applied to private Bills under British Parliamentary practice; and we further propose that any such Bill shall, after being passed by the provincial Council, be reserved for the consideration of the Governor-General, in accordance with the proposals contained in paragraph 36.

(3) *Ports and Waterways.*—The question of the control of ports and waterways presents certain special features. At present both are administered under the immediate control of the local Governments, but it is obvious that the development and control of ports is very closely connected with the regulation of shipping, which we have assigned as an All-India subject, and has certain aspects which are not only of Indian but also of Imperial importance. The larger inland waterways also are of interest to India as a whole, and may be injuriously affected in one province by action or neglect in another, they also have a most important bearing on the question of railway development. There has been much discussion on the subject, especially in Bengal, where a proposal for a Waterways Trust has been steadily advocated, and the Bengal Government have recommended that if such a Trust is constituted it should be directly under the control of the Government of India. No definite scheme for such central control has been laid before the Committee, but we consider it desirable to leave the way open for the adoption of such a scheme, and have therefore made provision in the All-India and provincial lists which will enable the Government of India to take over direct control of ports and inland waterways to such an extent as may hereafter be thought expedient.

(4) *Religious and Charitable Endowments.*—The question of Religious and Charitable Endowments has been under more or less constant discussion since the Act of 1863 was passed. In the circumstances of India, it seems impossible to deal separately with the two classes of endowments, and the increasing desire for the effective supervision of endowments has been checked by the fear of affecting religious rites and usages. Our proposals under the head of legislative control provide that all provincial legislation affecting the religion or religious rites or usages of any class of British subjects in British India shall be excluded from the class of Bills requiring previous sanction, but shall be reserved for the consideration of the Governor-General [ *vide* paragraph 36 (3) ], and the object of these proposals, and of including religious and charitable endowments in the list of provincial subjects, is to leave it open to the provincial legislatures to seek a solution of the difficulties that surround the question.

## PART II.—POWERS OF CONTROL BY THE GOVERNMENT OF INDIA IN RELATION TO PROVINCIAL SUBJECTS.

*General Principles.*

16. Under this head arises a question which is inseparable from those which have to be considered in framing the lists of All-India and provincial subjects, namely, what is to be the effect as regards provincial powers of putting a subject in the provincial list? Or in other words, what is to be the extent of the "acknowledged authority" of the province in relation to provincial subjects? In the Memorandum already referred to (Annexure II) the Government of India have given an indication of their views on this question. The following passage may be quoted from paragraph 11 of the memorandum:—

"Among provincial subjects some will be transferred. Taking the case of these first the Government of India think that the exercise of the central Government's power to intervene in provincial subjects should be specifically restricted to the following purposes:—

- (i) to safeguard the administration of Government of India subjects;
- (ii) to secure uniformity of legislation where such legislation is considered desirable in the interests of India or of more than one province;
- (iii) to safeguard the public services to an extent which will be further determined subsequently;
- (iv) to decide questions which affect more than one province.

So far as legislation is concerned the Government of India think that the exercise of the legislative powers of the Central Government should be by convention restricted in the manner proposed in paragraph 212 to the above-named grounds".

This proposal is qualified by the statement that it should be regarded as relating to control which is not based on financial considerations. To the question of financial control we refer later.

17. Our view as to the four purposes for which it is proposed to retain power to intervene in transferred subjects may be briefly stated. As to the first, it is clearly necessary for the Government of India to retain power to safeguard the administration of its own subjects, which we have called "All-India subjects." It is also necessary for the Government of



India to retain power to intervene to decide questions in dispute between provinces ; but we should prefer to see the fourth purpose expressed in terms less wide than those proposed, and it should, we think, be made clear that the provinces are to have an opportunity of settling for themselves any matter in dispute affecting a provincial subject before the Government of India exercise their power to intervene. We suggest therefore that the fourth purpose should be stated as follows :—

“To decide questions arising between two or more provinces, failing agreement between the provinces concerned.”

With regard to the second purpose, we feel that acceptance of the purpose of securing uniformity of legislation stated in these wide terms would make it difficult, if not impossible, for any convention to come into existence limiting the interference of the Indian legislature in provincial subjects. We have, therefore, in our list of provincial subjects, and in our proposals with regard to the legislative powers of the provinces, endeavoured to provide specifically for cases where the need for uniformity of legislation must be recognized, and we have thus, we believe, made the reservation of this general power unnecessary. Where, under our proposals, power has been reserved to the Indian legislature to legislate, we have, as already stated, treated the power so reserved as an All-India subject.

With regard to the third purpose, safeguarding the public services, our proposals on this subject are set out in the Section which deals with the public services. To the extent to which control is to be reserved by the Government of India and the Indian legislature, the public services will be an All-India subject. These proposals as to legislation and the public services enable us therefore to reduce the number of the purposes for which the Government of India and the Indian Legislature should retain power to intervene in transferred subjects to two, which may be stated as follows :—

- (1) To safeguard the administration of All-India subjects.
- (2) To decide questions arising between two or more provinces, failing agreement between the provinces concerned.

18. In the case of provincial subjects which are reserved, the Memorandum (Annexure II), after stating that the

Government of India look forward in future to very different relations between the central and provincial Governments, even in reserved subjects, from those which have obtained in the past, proceeds as follows —

"Nevertheless, as they have already said, the Government of India accept the principle laid down in paragraph 213 that an official government which is not subject to popular control cannot properly be legally exempted from superior official control. Bearing in mind the further fundamental principle that, saving its responsibility to Parliament, the central Government must retain indisputable authority in essential matters, and also the practical danger that the specification of certain grounds for the exercise of powers of control may be taken to imply the exclusion of others, they hold that it would be unwise to lay down any specific limitations upon their legal powers of interference with provincial Governments in reserved subjects. In respect of these therefore they propose no amendment of section 45 of the Government of India Act."

The paragraph then proceeds to give an indication of the Government of India's views as to the purposes for which their control in regard to reserved subjects will generally be exercised in future, but it is made clear that this expression of their views is not intended to serve as the basis of any formal limitation of their legal powers.

19. We think there is great weight in the considerations urged against the plan of making, in the case of reserved subjects, any such list of purposes of intervention by the Government of India as is proposed in the case of transferred subjects, and thus imposing a specific restriction on the Government of India's general powers of control. At the same time we feel that the effect of the important distinction between agency and provincial functions should receive formal recognition; otherwise the absolute powers of control reserved to the Government of India under sections 33 and 45 of the Government of India Act will apply equally to both sets of functions, except in so far as provincial subjects are transferred, and, apart from transfer, there will be no formal distinction between the delegation of authority to the province as an agent in relation to All-India subjects and the process of devolution whereby it is intended that the province should obtain an acknowledged authority of its own as regards provincial subjects. Failure to recognize this distinction, except in the case of transferred subjects, is bound to be a source of difficulty and confusion in the relations between central and provincial Governments, and between the provincial

Governments and their own legislatures, and appears to us to be inconsistent with the policy laid down in the Joint Report.

20. In this connection we would refer to the opening words of clause II of our reference, which enjoin us to keep in view the object of giving to the provinces "the largest measure of independence, legislative, administrative and financial, of the Government of India, which is compatible with the due discharge by the latter of their own responsibilities", and also to the second formula contained in paragraph 189 of the Joint Report, from which these words are taken. This formula runs as follows .—

"The provinces are the domain in which the earlier steps towards the progressive realization of responsible government should be taken. Some measure of responsibility should be given at once, and our aim is to give complete responsibility as soon as conditions permit. This involves at once giving the provinces the largest measure of independence, legislative, administrative and financial, of the Government of India which is compatible with the due discharge by the latter of its own responsibilities."

It will be observed that this formula links together the two questions of provincial independence of the Government of India and growth of responsible government in the province. Subsequent paragraphs of the Joint Report make it clear that, though the Governor in Council remains primarily responsible for provincial reserved subjects, the provincial Legislative Councils are, from the outset, to be directly concerned in these subjects. They are to legislate with regard to them, they are to discuss and deal with the budget which contains provision for them and they are to have Standing Committees which will bring some of their members into immediate touch with their administration. Though special procedure is to be provided by which to secure legislation and to obtain funds for reserved subjects, where the proposals of the Governor in Council do not meet with the approval of the Legislative Council, it may be assumed that a Governor in Council will not resort to this special procedure if he can reasonably avoid it.

21. It appears to be clear therefore that the sphere of influence of the new provincial Councils will extend beyond the actual area of the transferred subjects. The initiative with regard to the reserved subjects will rest with the Governor in Council, but, in shaping his course with regard to such subjects, the Governor in Council will be bound to take into

account the important factor of his relations with his Legislative Council, and, it may be added, with the Ministers who form the non-official side of his Government. If the Governor in Council is thus put in a new situation with regard to provincial subjects which remain reserved, this new situation must be recognized in the relations between the Governor in Council and the authorities which control him, represented by the Government of India. We do not read paragraph 213 of the Joint Report, which is referred to in the Government of India Memorandum, and is one of the paragraphs quoted in our reference, as implying that we are to leave this new situation out of account in considering the control which the Government of India are to retain in relation to reserved subjects.

22. A new principle has therefore in our opinion to be applied to all the subjects included in the sphere of provincial administration as provincial subjects, in view of the new conditions which the development of popular institutions in the provinces will create, and we think that this principle can best be laid down by reference to the terms of the announcement of August 20th, 1917, the essential portion of which will, it may be assumed, be incorporated in the preamble to the new Bill. The preamble will, in that case, contain a statement to the effect that "with a view to the progressive realization of responsible government in British India as an integral part of the Empire, it is expedient gradually to develop self-governing institutions in that country." On the assumption that the preamble will be so framed, we propose that the new position as regards the relations of the Government of India with provincial Governments, in so far as concerns the administration of provincial subjects, should be formally recognized by an authoritative declaration to the following effect :—

"The powers of superintendence, direction and control over local Governments vested in the Governor-General in Council under the Government of India Act, 1915, shall, in relation to provincial subjects, be exercised with due regard to the purpose of the new Act, as stated in the preamble."

The position with regard to the whole class of provincial subjects having been thus dealt with, the special position of transferred subjects should be defined, in accordance with the suggestion of the Government of India, by a clause to the

following effect, which will operate as an amendment of the Government of India Act :—

“ The powers of superintendence, direction and control over local Governments vested in the Governor-General in Council under the Government of India Act, 1915, shall, in relation to transferred subjects, be exercised only for such purposes as may be specified in rules made under this Act, but the Governor-General in Council shall be the sole judge as to whether the purpose of the exercise of such power in any particular case comes within the purposes so specified.”

The last words are added in order to make it clear that we do not contemplate such a limitation of the powers of the Governor-General in Council as would render the exercise of these powers open to challenge in the Courts. Our acceptance of the proposal with regard to the specification in rules of the purposes to which the exercise of the powers of the Governor-General in Council will be restricted in relation to transferred subjects is based on the assumption that the making of rules under this provision will be subject to effective Parliamentary control.

23. The general effect of these arrangements will be to apply one principle to all subjects marked as provincial ; but the division of provincial subjects into the two classes, reserved and transferred, and the different authorities constituted for dealing with those two classes of subjects, will mark the fact that the principle is to have a far wider application in the one case than in the other, and this point will be further emphasized by the limitation of the purposes for which the Government of India may interfere in the one case and the absence of any such limitation in the other. While the proposed declaration will give a guiding principle in relation to the control by the Government of India over provincial subjects, whether reserved or transferred, it cannot be interpreted as laying down any hard and fast rule. The Government of India will not be bound to accept proposals of an official provincial Government merely because they are backed by a majority in the provincial Legislative Council. They will still be responsible to the Secretary of State and to the Imperial Parliament for exercising their full legal

authority, where they think necessary, to reject such proposals, however strongly supported, but the effect of the declaration will be to involve definite recognition of the relation between the Governor in Council and his provincial Council as one of the factors in the situation which must be taken into account. The proposed declaration will necessarily apply equally to the exercise of the powers of control vested in the Secretary of State (under section 2 of the Government of India Act), in so far as local Governments are concerned, and the Secretary of State will be responsible to the Imperial Parliament for effect being given to the policy laid down.

24. The distinction between a reserved and a transferred subject in respect of the control to be exercised by the Government of India has an important bearing on the question of the actual definition of provincial subjects as appearing in the provincial list. As long as the Government of India continue to exercise in relation to a provincial subject the general control vested in them under the Government of India Act, without any restriction of the purposes for which that control may be exercised, the limitation of the provincial subject by precise definition is not a matter of great practical importance; but, as soon as the control of the Government of India becomes a restricted control which can only be exercised for certain specific purposes, the question of definition acquires a new importance and needs very careful examination. The position can be illustrated by reference to such subjects as Land Revenue and Police. In the case of Land Revenue the Memorandum received from the Revenue and Agriculture Department proposes that the control of the Government of India shall, in future, be limited to requiring that the rules made by a local Government for the guidance of Settlement Officers in assessing revenue must be "in accordance with general principles sanctioned by the Governor-General in Council." If Land Revenue is recognized as a purely provincial concern, then it is difficult to justify or give practical effect to such a control by the Government of India as this provision would imply. On the other hand, it may be said that Land Revenue never can be recognized as a purely provincial concern, because the Government of India must always be vitally interested in the safeguarding of the great sources of national revenue, of

which Land Revenue is one, though, under the proposed financial arrangement, it is a source from which the province alone will draw. In the case of Land Revenue, as it is not now recommended for transfer and the Government of India's general control therefore remains, we have not attempted to define the exact form which that control should in future take.

The subject of Police affords another illustration of the importance of this question of definition. It is obvious that the interests of the Government of India and of other provinces may be seriously affected if a particular province fails to maintain its police force at a sufficient strength and in a reasonable state of efficiency. If therefore the question arose as to the transfer in any province of the police to the charge of Ministers, the question of the definition of the powers of the central Government and of the obligation of the province in relation to Police would assume quite a different aspect from that which it presents as long as the general control of the Government of India is retained unhampered by any restriction to special purposes.

We have sought by these illustrations to make it clear that, where a provincial subject is not now to be transferred in any province, its definition as a provincial subject, which involves the question of the control to be retained in respect of it by the central Government, is not to be regarded as having received final consideration. The question of such definition must be reviewed and decided when the question of transfer arises, and our proposed definitions of those provincial subjects which are to remain reserved must therefore not be regarded as prejudging the question as to the limitation necessary for the purpose of protecting the interests of the central Government when the date of transfer comes.

25. We received from the Government of India on the 21st February, when our enquiry was approaching its conclusion, a further short Memorandum on the question of Division of Functions between the central Government and the provinces. This Memorandum forms Annexure III to our Report. It will be seen that the final paragraph of this Memorandum has a bearing on the proposals contained in paragraphs 20—23. We note a suggestion contained in this Memorandum that the subjects which appear in the provincial budget should be described as the subjects which the

provinces administer. We are not quite clear as to the effect of this proposal, but it may be read as a suggestion that the distinction to be drawn between agency functions and provincial functions should be made clear by relieving the provincial exchequer of expenditure on agency functions, and making such expenditure a direct charge against the Government of India. We think that this would be a logical way of dealing with the position, and that there would be obvious advantages in its adoption, provided financial adjustments can be made which would prevent inequitable results.

#### ADMINISTRATIVE CONTROL.

26. The existing control by the Government of India over provincial administration finds expression in the provisions of a considerable number of statutes and regulations which specially reserve power to the Governor-General in Council, or require his previous sanction or subsequent approval to action taken by the provincial Governments. We have received from the provincial Governments a number of detailed proposals for the relaxation of this control in particular matters, either by the delegation of powers or by the amendment of the Act concerned ; and the Government of India have also supplied us with departmental Memoranda treating the question on similar lines. We are not in a position to deal with these detailed suggestions, but we recommend that the matter should be carefully examined now in the light of the material collected and of the new relations to be established between the central and provincial Governments. In the Memorandum dated the 19th February (Annexure III) the Government of India refer to the matter as follows "In respect of these same subjects (*i.e.* subjects that the provinces administer but which are not transferred subjects) the Government of India will undertake a formal and systematic scheme of devolution of their authority, such scheme to be compatible with the exercise of their control in matters which they regard as essential to good government." If, in the necessary interval before the reforms scheme takes effect, the existing statutes are revised so as to eliminate provisions necessitating references to the Government of India which are considered no longer necessary, the position will be simplified and the provinces will have from the start a freer hand in dealing with provincial subjects.



27. As regards the method by which the Government of India should exercise their right of intervention when necessary in matters of administration we propose in paragraph 63 to give effect to the suggestion contained in the Government of India Memorandum (Annexure II) by providing that the duty shall be laid upon the Governor "to take care that any order given by the Governor-General in Council is complied with by the department concerned, whether such department is reserved or transferred."

### CONTROL OVER PROVINCIAL LEGISLATION.

28. Reference has already been made to the position as to provincial legislation under the existing law, but it is now necessary to deal with the matter more fully. Section 79 of the Government of India Act provides as follows :—

79. (1) The local legislature of any province has power, subject to the provisions of this Act, to make laws for the peace and good government of the territories for the time being constituting that province.

(2) The local legislature of any province may, with the previous sanction of the Governor-General, but not otherwise, repeal or alter as to that province any law made either before or after the commencement of this Act by any authority in British India other than that local legislature.

(3) The local legislature of any province may not, without the previous sanction of the Governor-General, make or take into consideration any law—

- (a) affecting the public debt of India, or the customs duties, or any other tax or duty for the time being in force and imposed by the authority of the Governor-General in Council for the general purposes of the Government of India ; or
- (b) regulating any of the current coin, or the issue of any bills, notes or other paper currency ; or
- (c) regulating the conveyance of letters by the post office or messages by the electric telegraph ; or
- (d) altering in any way the Indian Penal Code ; or
- (e) affecting the religion or religious rites and usages of any class of British subjects in India ; or
- (f) affecting the discipline or maintenance of any part of His Majesty's naval, or military forces ; or
- (g) regulating patents or copyright ; or
- (h) affecting the relations of the Government with foreign princes or states.

(4) The local legislature of any province has not power to make any law affecting any Act of Parliament.

(5) Provided that an Act or a provision of an Act made by a local legislature, and subsequently assented to by the Governor-General in pursuance of this Act, shall not be deemed invalid by reason only of its requiring the previous sanction of the Governor-General under this Act.

29. It will be observed that under this section the previous sanction of the Governor-General has to be obtained

- (1) to any provincial Bill repealing or altering a law made by any authority in British India other than the local legislature of the province concerned,
- (2) to any provincial Bill bearing on certain All-India subjects specified in sub-clause (3); and
- (3) to any provincial Bill affecting the religion or religious rites and usages of any class of British subjects in India [sub-clause (3) (e)].

These statutory provisions as to previous sanction have been supplemented by executive orders which have the effect of requiring provincial Governments to submit their Bills for previous sanction in all but a very limited class of cases. In practice the requirement of previous sanction has been applied so as to render necessary not only the submission to the Government of India of the Bill itself prior to introduction, but also the submission of any important amendments proposed during the passage of the Bill. Reference may be made to paragraphs 114-116 of the Joint Report, which explain the effect of the existing restrictions, and recognise the need of an effective measure of devolution before provincial Councils can acquire "any genuine independence in legislation."

30. It is clear that the requirement of previous sanction is calculated greatly to hamper and delay the work of provincial legislatures. This particular form of limitation has moreover as a rule the unfortunate effect of inviting the judgment of the Government of India upon a provincial Bill before they have had the guidance which could be obtained from a public discussion of its terms. On the other hand, as the provinces have in theory the right to range over the whole legislative field, it is essential that they should be under such effective restraint in the exercise of this right as will suffice to keep them off certain portions of the field altogether, and to place their entry into other portions under very strict control. The

problem which we have to solve is to mark off for the provinces a reasonably wide legislative field, which they can be free to enter without first passing the barrier of previous sanction, and at the same time to provide such safeguards as may be necessary to enable the Government of India to exercise their supervision, for the purpose of protecting the wider interests committed to their charge, without being compelled to have recourse to a frequent exercise of the veto.

31. It is contemplated in paragraph 212 of the Joint Report that, subject to certain important reservations, "within the field which may be marked off for provincial legislative control the sole legislative power shall rest with the provincial legislatures." The question of the means by which the control of this legislative field is to be reserved to the provincial legislature is discussed in the paragraph referred to. As has already been indicated we are in agreement with the conclusion to which that paragraph points, that it is better to rely on limitations imposed by convention or constitutional practice rather than on a statutory demarcation so framed as to bar the entry of the Indian legislature into the provincial field. But the growth of such a convention will depend on the degree of success attained in marking out the boundaries of the provincial field of legislation. In this connection there are two points in paragraph 238 of the Joint Report which it is necessary to bear in mind.

(1) That paragraph does not contemplate that the legislative field of the provinces will be co-extensive with provincial subjects, but suggests that there will be some provincial subjects in respect of which legislation will remain in the hands of the Government of India.

(2) It is further pointed out in paragraph 238 that, in dealing with each subject included in the provincial list, the powers of provincial legislatures to alter the Acts of the Indian legislature on that subject will have to be carefully considered.

32. The easiest way of explaining our proposals as to previous sanction will be by stating them in relation to the existing provisions of section 79. It may be that for the purpose of drafting the new Bill, it will be found better, as suggested in paragraph 114 of the Report, entirely to recast the existing provisions of section 79, but this is a question of

drafting which we do not attempt to decide. Taking section 79 as our basis, we propose that it should be amended as follows :—

Omit from section 79 (2) the words "with the previous sanction of the Governor-General but not otherwise," and substitute "subject to the provisions of the succeeding sub-section."

Omit from section 79 (3) sub-clause (a) and add the following sub-clauses :—

- "(1) regulating any other All-India subject ;
- (2) affecting any power expressly reserved to the Governor-General in Council by any existing law ;
- (3) altering or repealing the provisions of any of the Acts passed by the Indian Legislative Council included in the schedule ;
- (4) regulating a provincial subject which has been declared to be "subject to Indian legislation ;"
- (5) altering or repealing any provisions of a law passed by the Indian legislature after the commencement of this Act (*i. e.*, the new Bill) which by the terms of such law may not be repealed or altered by a local legislature without previous sanction.

We append a copy of the section showing these amendments :—

79. (1) The local legislature of any province has power, subject to the provisions of this Act, to make laws for the peace and good government of the territories for the time being constituting that province.

(2) The local legislature of any province may, [with the previous sanction of the Governor-General, but not otherwise,] *subject to the provisions of the succeeding sub-section* repeal or alter as to that province any law made either before or after the commencement of this Act by any authority in British India other than that local legislature.

(3) The local legislature of any province may not, without the previous sanction of the Governor-General, make or take into consideration any law—

- (a) affecting the public debt of India, or the customs duties, or any other tax or duty for the time being in force and imposed by the authority of the Governor-General in Council for the general purposes of the Government of India ; or

# REPORT OF THE FUNCTIONS COMMITTEE.

- (b) regulating any of the current coin ; or the issue of any bills, notes or other paper currency , or
- (c) regulating the conveyance of letters by the post office or messages by the electric telegraph ; or
- (d) altering in any way the Indian Penal Code , or
- [ (e) affecting the religion or religious rites and usages of any class of British subjects in India ; or ]
- (e) [ (f) ] affecting the discipline or maintenance of any part of His Majesty's naval or military forces , or
- (f) [ (g) ] regulating patents or copyright , or
- (g) [ (h) ] affecting the relations of the Government with foreign princes or states , or
- (h) *regulating any other All-India subject ; or*
- (i) *affecting any power expressly reserved to the Governor-General in Council by any existing law ; or*
- (j) *altering or repealing the provisions of any of the Acts passed by the Indian Legislative Council included in the schedule ; or*
- (k) *regulating a provincial subject which has been declared to be subject to Indian legislation ; or*
- (l) *altering or repealing any provision of a law passed by the Indian legislature after the commencement of this Act (i.e., the new Bill) which by the terms of such law may not be repealed or altered by a local legislature without previous sanction.*

The following is the Schedule referred to —

## SCHEDULE.

Indian Penal Code.	The Provident Insurance Societies Act.
Indian Evidence Act.	The Indian Life Assurance Companies Act.
Banker's Book Evidence Act.	The Indian Official Secrets Act.
Indian Contract Act.	General Clauses Act.
Specific Relief Act.	Indian Short Titles Act.
Negotiable Instruments Act.	Common Carriers Act.
Indian Trust Act.	Provident Funds Act.
Transfer of Property Act.	Indian Ports Act.
Civil Procedure Code.	Indian Lunacy Act.
Indian Limitation Act	
Criminal Procedure Code.	
Indian Companies Act.	

33 The general effect of these proposals will be to leave the provinces free to legislate without previous sanction on provincial subjects, whether reserved or transferred, which are not specially made subject to Indian legislation. Previous sanction will, however, still be required, even as regards such subjects, where the proposed Bill affects powers expressly reserved by statute to the Governor-General in Council, or amends any provision of certain All-India Acts, such as the Indian Codes, included in the schedule, or amends any clause of an Act passed by the Indian legislature after the new scheme has come into operation which, by the terms of the Act itself, is specially protected. It will be found on examination of the provincial list that under these proposals there are a number of important provincial subjects on which the provinces will be free to legislate without previous sanction, while in other cases, where the freedom is not complete, the limitations proposed affect a small portion of the subject only. The freedom of the province to legislate on these subjects without previous sanction will, it is contemplated, give rise to a corresponding constitutional practice under which the Indian legislature will refrain from legislation on these subjects.

34 The proposal that a provincial Bill, affecting any power expressly reserved by existing statutes to the Governor-General in Council, should require previous sanction will be recognized as reasonable, but it should be noted here that the number of cases in which such power is reserved with regard to provincial subjects will be greatly reduced when legislative effect has been given to the proposals contained in the departmental memoranda which we have received from the Government of India.

35. It will be observed that among the changes which it is proposed to introduce into section 79 is the omission from sub-section (3) of clause (e), which has hitherto required previous sanction for any provincial Bill "affecting the religion or religious rites and usages of any class of British subjects in India." This clause is wide in its terms, and the requirement of previous sanction in respect of Bills falling under this clause has seriously hampered initiative. The proposed exclusion of Bills falling under this head from the class of Bills which require previous sanction raises the question whether the general relaxation proposed of the provisions as

to previous sanction does not necessitate the creation of some other machinery whereby, in the case of certain classes of Bills, it will be possible to secure, at a later stage, an opportunity for consultation between the provincial Government and the Government of India, before such finality has been reached as to leave no course open to the Governor-General between assent and veto. It is suggested in the Joint Report (para. 254) that it should be open to the Governor-General in future to reserve provincial Bills for the signification of His Majesty's pleasure thereon, in the same way as he is now able to reserve Indian Bills under section 68 of the Government of India Act. The adoption of this plan will not, however, meet the point which we now have in view. The plan which we propose embodies another suggestion contained in the same paragraph, that the Governor should have a discretionary power to return a Bill to his Legislative Council for re-consideration of the provisions which it contains, and links with the adoption of this suggestion a provision enabling the Governor in certain cases to reserve a Bill for the consideration of the Governor-General, instead of himself either assenting or withholding assent.

36. The following are our proposals with regard to the reservation of provincial Bills by the Governor for the consideration of the Governor-General :—

*Proposed provisions as to reservation of provincial Bills .—*

- (1) In the case of any Bill passed by the provincial Legislative Council and presented to the Governor for his assent, the Governor may, according to his discretion, but subject to the provisions of the next succeeding paragraphs as to reservation of Bills, either
  - (a) assent, or
  - (b) withhold assent, or
  - (c) return the Bill with a recommendation for its amendment.
- (2) In the case of any Bill, not previously sanctioned by the Governor-General, presented for the Governor's assent which either
  - (a) appears to the Governor to affect any matter specially committed to his charge under his Instructions, or

- (b) though primarily relating to provincial subjects, appears to him incidentally to affect any All-India subject, or
  - (c) appears to him to affect the interests of any other province, the Governor may reserve the Bill for the consideration of the Governor-General.
- (3) In the case of any Bill not previously sanctioned by the Governor-General presented for the Governor's assent which either
- (a) appears to him to affect the religion or religious rites or usages of any class of British subjects in British India, or
  - (b) contains provisions regulating the constitution or functions of any university, or
  - (c) contains provisions which have the effect of including within a transferred subject matters belonging to reserved subjects, or
  - (d) provides for the construction or management of a light or feeder railway or tramway, other than a tramway within a municipal area, the Governor shall, unless he is otherwise directed by the Governor-General, reserve the Bill for the consideration of the Governor-General.
- (4) The following provisions shall apply to any Bill reserved for the consideration of the Governor-General under the preceding paragraphs :—
- (i) The Governor may, at any time within six months of the date of the reservation of the Bill, with the consent of the Governor-General but not otherwise, return the Bill for further consideration by the Council with a recommendation that the Council shall consider amendments thereto, and such Bill, when so returned, together with any recommendations relating thereto, shall be dealt with by the Council either in Council or in Grand Committee, according to the procedure applied to the Bill in the first instance, provided that, if the Bill is of such a nature as to be subject



to his certifying power, the Governor may certify the Bill with any amendment recommended at this stage, though the Bill had previously not been certified.

- (ii) After any Bill so returned has been further considered by the Council, either in Council or in Grand Committee, together with any recommendations made by the Governor relating thereto, the Bill, if re-affirmed in accordance with the appropriate procedure, with or without amendment, may be again presented to the Governor.
- (iii) The Governor shall not be bound to reserve a second time any Bill falling under the provisions of clause (3), but may again reserve such Bill if he thinks fit.
- (iv) Any Bill reserved for the consideration of the Governor-General shall, if assented to by the Governor-General within a period of six months from the date of such reservation, become law on due publication of such assent, but, if not assented to by the Governor-General within such period of six months, shall lapse and be of no effect, unless before the expiration of that period either
  - (a) the Bill has been returned by the Governor for further consideration by the Council, or
  - (b) in the case of the Council not being in session, a notification of the Governor's intention so to return the Bill at the commencement of the next session has been published in the gazette.

37. It will be observed that the above proposals divide the Bills to which the procedure of reservation is to apply into two classes, and that, while in the case of the first class the adoption of this procedure is left to the Governor's discretion, in the case of the second it is made compulsory. The first class, where the Governor has discretion as to whether he will reserve or not, includes Bills which appear to the Governor to affect any matter specially committed to his charge under his Instructions, or to affect any All-India subject, or to affect the interests of any other province. The second class, as to which the reservation procedure is pro-

posed to be made compulsory, includes Bills which appear to the Governor to affect the religion or religious rites and usages of any class of British subjects in India, university Bills, Bills which shift the boundaries between transferred and reserved subjects, and railway or tramway Bills.

38. These two sets of proposals as to previous sanction and reservation should be taken together. Their adoption will greatly reduce the legislative sphere to which previous sanction applies, and will thus give the provinces much greater freedom in legislation, whilst it will also provide an opportunity for an *interim* examination by the Government of India, and a reasonably effective means of securing the removal of defects in the case of legislative measures affecting the Government of India or interests which it is their special duty to protect, instead of leaving open to the Governor-General no course between assent and veto.

39. Under these proposals as to previous sanction and reservation, provincial Bills will fall into four classes :—

- (i) Bills requiring previous sanction,
- (ii) Bills in respect of which reservation is compulsory,
- (iii) Bills in respect of which reservation is optional, and
- (iv) Bills which are subject neither to reservation nor to previous sanction.

The important distinction, however, is the distinction between the first class and the other three classes. If provincial legislation on a subject requires previous sanction, it follows that there is to be no constitutional or conventional barrier against the intervention of the Indian legislature in that subject. On the other hand, where the province has freedom to legislate without previous sanction, it is working in its own legislative sphere, and constitutional practice will normally forbid the Indian legislature from invading that sphere.

40. There remains, however, a special case for consideration, namely, legislation affecting a certain class of provincial subjects as to which it seems expedient, while giving freedom to provincial legislatures, also to preserve the full authority of the Indian legislature. The subjects falling into this class are subjects in which the backwardness or laxity of one province is specially liable seriously to endanger

the interests of other provinces. They all have to do with health, either that of human beings, or that of animals or plants. The measures which we have in view may be classified under four heads —

- (i) Prevention of infectious or contagious diseases (forming part of the general subject of public health),
- (ii) Prevention of diseases among animals,
- (iii) Prevention of plant diseases, and
- (iv) Measures to be taken against destructive insects and pests

In regard to these matters, we recommend that it should be definitely recognized that it is open to the Indian legislature to legislate, notwithstanding that they fall within the limits of provincial subjects which are not classified as subject to Indian legislation. The provinces will, however, retain their own freedom to legislate on these subjects without previous sanction, except that, where the Indian legislature passes a law of general application dealing with these subjects, it will be open to that legislature to prescribe that a provincial legislature shall not be competent to amend such a law without obtaining previous sanction.\*

41. In making the above recommendation we do not leave out of consideration one of the alternatives mentioned in paragraph 212, namely, that the Indian legislature should pass legislation which might be adopted either *simpliciter* or with modifications by any province which may wish to make use of it. We agree that this form of legislation should be recognized as within the scope of the Indian legislature as regards any provincial subject, and that such legislation should not be regarded as involving any invasion of the provincial field. But, as the adoption of such model legislation passed by the Indian legislature is to be left entirely to the discretion of the province, the acceptance of this plan does not adequately provide for such conditions as are referred to in the preceding paragraph.

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\* Reference may be made to existing All-India Acts relating to matters dealt with in this paragraph, viz., Epidemic Diseases Act, Destructive Insects and Pests Act, Glanders and Farcy Act, Live-stock Importation Act and Dourine Act,

PART 3.—LISTS OF ALL-INDIA AND  
PROVINCIAL SUBJECTS.

*These lists are to be read subject to the following Rules of interpretation :—*

I. The effect of a provision in the list of provincial subjects that any matter shall be "subject to Indian legislation" is that legislation regulating that matter and powers reserved by such legislation to the Governor-General in Council are made an All-India subject, and that the provincial legislature is precluded from legislating thereon without previous sanction. The use of the phrase "subject to Indian legislation" is not, however, intended to exclude the alternative of a matter being dealt with by imperial legislation, *i.e.*, by an Act of the Parliament of the United Kingdom, or by rules made under such an Act.

II. Any matter included in the Provincial List is, to the extent of such inclusion, to be deemed to be excluded from any All-India subject of which, but for such inclusion, it would form part.

ALL-INDIA SUBJECTS.

Subjects.	Remarks.
1. His Majesty's Naval, Military and Air Forces in India, including Royal Indian Marine and volunteers, but excluding military police maintained by provincial Governments.	
Naval and military works and cantonments.	
2. External relations, including naturalisation and aliens.	
3. Relations with Native States.	

# REPORT OF THE FUNCTIONS COMMITTEE

## ALL-INDIA SUBJECTS—*Contd.*

Subjects.	Remarks.
4. Any territory in British India other than a province mentioned in the schedule.	The schedule will include the eight provinces to which the reform scheme applies.
5. Excluded areas.	These are the backward areas referred to in paragraph 199 of the Joint Report which it is suggested should be administered by the Governor under the control of the Government of India.
6. Communications—to the extent described under the following heads :—	
(a) Railways and tramways, except tramways within municipal areas, and except in so far as provision may be made for construction and management of light and feeder railways and tramways, other than tramways within municipal areas, by provincial legislation enacted in accordance with procedure to be prescribed by standing orders of the provincial Legislative Council :	These standing orders of the provincial Legislative Council should require that, before any Bill providing for construction and management of a light or feeder railway is introduced in the Council, sufficient notice of the proposals contained in such Bill shall be given to the Railway Board and to such other parties as may be prescribed, and that the Bill shall be dealt with by procedure similar to that applied to private Bills under British Parliamentary practice, and further that any such Bill shall, after being passed by the provincial Council, be reserved for the consideration of the Governor-General.

ALL-INDIA SUBJECTS—*Contd*

Subjects.	Remarks.
(b) Roads, bridges or ferries declared by the Governor-General in Council to be of military importance	
(c) Aircraft	
(d) Inland waterways, to an extent to be declared by or under Indian legislation.	The position regarding inland waterways is indicated in paragraph 15
7. Shipping and Navigation (including shipping and navigation on inland waterways in so far as declared to be under Indian control in accordance with 6 (d).)	It is suggested that wide powers should be delegated to local Governments to enable them to regulate local shipping traffic, <i>e.g.</i> , coasting vessels plying between ports in the same province, especially as regards accommodation provided for passengers.
8. Light-houses, beacons and buoys.	
9. Port quarantine and marine hospitals.	
10. Ports declared to be major ports by or under Indian legislation.	
11. Posts, telegraphs and telephones.	
12. Sources of imperial revenue, including customs, cotton excise duties, income-tax, salt, stamps (non-judicial).	
13. Currency and coinage.	
14. Public debt of India.	

ALL-INDIA SUBJECTS—*Contd.*

Subjects.	Remarks.
15. Savings banks.	
16. Department of the Comptroller and Auditor-General.	The proposals regarding audit and accounts are indicated in paragraph 73.
17. Civil Law, including laws regarding status, property, civil rights and liabilities and civil procedure	
18. Commerce, including banking and insurance.	
19. Trading companies and other associations.	
20. Control of production, supply and distribution of any articles in respect of which control by a central authority is declared by or under Indian legislation essential in the public interests, and control of cultivation and manufacture of opium and sale of opium for export.	
21. Control of petroleum and explosives.	The law regarding petroleum and explosives is at present under the direct control of the Government of India and uniformity of law and administration is desirable.
22. Geological survey.	
23. Control of mineral development, in so far as such control is reserved to the Governor-General in Council under rules made or sanctioned by the Secretary of State, and regulation of mines.	The rules regulating the grant of licenses to prospect for minerals and the grant of leases of mines and minerals are made by the Governor-General in Council and sanctioned by the Secretary of State in Council.

ALL-INDIA SUBJECTS -- *Contd.*

Subjects.	Remarks.
	Mining administration is now controlled by the Government of India and there is a small expert department of Inspectors working freely all over India. It would be impossible without great extravagance and loss of efficiency for each province to have its own expert staff.
24. Inventions and designs.	
25. Copyright.	
26. Emigration and immigration and inter-provincial migration.	It is considered desirable to make inter-provincial migration an All-India subject to be administered by the provincial Governments as agents.
27. Criminal Law, including criminal procedure.	
28. Central police organization and railway police.	
29. Control of possession and use of arms.	
30. Central institutions of scientific and industrial research, including observatories and central institutions for professional or technical training.	
31. Ecclesiastical administration.	The expenditure is incurred entirely by the Government of India. The Bishops and Clergy are under the administrative control of the



ALL-INDIA SUBJECTS—*Contd.*

Subjects.	Remarks.
	local Governments, except that the Bishop of Calcutta as Metropolitan is under the control of the Government of India. As a large portion of the expenditure is on behalf of the army, the subject must be an All-India one.
32. Survey of India.	
33. Archæology.	The expenses of the Archæological officers and establishments (except in Madras) are borne by the Government of India, while the cost of excavation, exploration and maintenance is provincial, though the Government of India assist by grants-in-aid. The Director-General of Archæology and his officers are under the control of the Government of India, while the local officers (Superintendents and Assistant Superintendents), whose work in some cases extends over more than one province, are under the executive orders of the local Government in whose jurisdiction their headquarters lie. The Government of India suggest that Archæology should be classed as an All-India subject.
34. Zoological survey.	
35. Meteorology.	

ALL-INDIA SUBJECTS--*Contd.*

Subjects.	Remarks.
36. Census and Statistics.	It will be necessary to provide that the Governor-General in Council shall have full power to obtain returns and information from local Governments on any subject in such form as he may prescribe.
37. All-India Services	<i>vide</i> Section IV.
38. Legislation in regard to any provincial subject, in so far as such subject is stated in the Provincial List to be subject to Indian legislation, and any powers relating to such subject reserved by legislation to the Governor-General in Council.	
39. All matters expressly excepted from inclusion in the Provincial List.	
40. All other matters not included in the list of provincial subjects.	

PROVINCIAL SUBJECTS.

1. Local self-government, that is to say matters relating to the constitution and powers of municipal corporations, improvement trusts, district boards, mining boards of health and other local authorities established in the province for purposes of local self-government, exclusive of matters arising under the Cantonments

PROVINCIAL SUBJECTS.—*Contd.*

Subjects.	Remarks.
<p>Act, and subject to Indian legislation (a) as regards powers of such authorities to borrow otherwise than from a provincial Government, and (b) as regards the levying by such authorities of taxation not included in the schedule of municipal and local taxation (<i>v.</i> paragraph 82).</p>	
<p>2. Medical administration, including hospitals, dispensaries and asylums and provision for medical education.</p>	<p>Legislation regarding the status and civil rights and liabilities of lunatics is an All-India subject and the Lunacy Act is included among the Indian Acts which cannot be amended without previous sanction. The question of medical registration falls under head 42.</p>
<p>3. Public health and sanitation and vital statistics.</p>	<p>The Committee consider that the Indian Legislature should have concurrent power to legislate regarding protection against infectious and contagious diseases (<i>v.</i> paragraph 40).</p>
<p>4. Education (excluding—</p>	<p><i>v.</i> paragraphs 15 and 45.</p>
<p>(1) the Benares Hindu University.</p>	<p>The Benares Hindu University is not a provincial but an All-India university.</p>
<p>(2) Chiefs' Colleges), subject to Indian legislation—</p>	<p>Chiefs' Colleges concern Native States.</p>

PROVINCIAL SUBJECTS—*Contd.*

Subjects.	Remarks.
(a) controlling the establishment, and regulating the constitutions and functions of new universities ; and	
(b) defining the jurisdiction of any university outside its own province ,	
and, in the case of Bengal, for a period of five years from the date when the reforms scheme comes into operation, subject to Indian legislation with regard to the Calcutta University and the control and organisation of secondary education.	
5. Public Works included under the following heads :—	
(a) Provincial buildings .	
(b) Roads, bridges and ferries, other than such as are declared by the Governor-General in Council to be of military importance :	
(c) Tramways within municipal areas ; and	
(d) Light and feeder railways, tramways, other than tramways within municipal areas, in so far as provision is made for their construction and management by pro-	<i>Vide</i> note to item No. 6, All-India List.

PROVINCIAL SUBJECTS.—*Contd.*

Subjects.

Remarks.

vincial legislation in accordance with procedure to be prescribed by standing orders of the provincial Legislative Council.

6. Irrigation and canals, drainage and embankments, and water storage, subject to such control of the Governor-General in Council in the case of works affecting another province, territory or State as may be provided in Indian legislation.

7. Land Revenue administration, as described under the following heads :—

(a) Assessment and collection of land revenue :

(b) Maintenance of land records, survey for revenue purposes, records of rights :

(c) Laws regarding land tenures, relations of landlords and tenants, collection of rent :

(d) Court of Wards, encumbered and attached estates :

(e) Land improvement and agricultural loans .

PROVINCIAL SUBJECTS—*Contd.*

Subjects	Remarks.
(7) Colonization and disposal of Crown lands and alienation of land revenue.	
8. Famine relief.	
9. Agriculture, including research institutes, experimental and demonstration farms, introduction of improved methods, provision for agricultural education, protection against destructive insects and pests and prevention of plant diseases.	(9) and (10) The Committee consider that the Indian legislature should have concurrent power to legislate regarding protection against destructive insects and pests and prevention of diseases of plants and animals, see paragraph 40.
10. Civil Veterinary Department, including provision for veterinary training, improvement of stock, and prevention of animal diseases.	
11. Fisheries.	
12. Co-operative Societies subject to Indian legislation.	
13. Forests, including preservation of game therein.	

PROVINCIAL SUBJECTS—*Contd.*

Subjects.	Remarks.
14. Land acquisition, subject to Indian legislation as regards acquisition of land for public purposes.	It is considered that in the case of land required for industrial purposes it should be open to the parties concerned to promote private Bills in the provincial legislatures.
15. Excise, that is to say the control of production, manufacture, possession, transport, purchase and sale of alcoholic liquor and intoxicating drugs, and the levying of excise duties and license fees on or in relation to such articles, but excluding, in the case of opium, control of cultivation, manufacture and sale for export	v. note to item 11, List of Provincial Subjects for Transfer.
16. Administration of justice, including constitution, maintenance and organization of Courts of justice in the province, both of civil and criminal jurisdiction, but exclusive of matters relating to constitution and powers of High Courts and subject to Indian legislation as regards the constitution and powers of Courts of criminal jurisdiction.	
17. Provincial law reports.	
18. Administrator-General and Official Trustee, subject to Indian legislation.	

PROVINCIAL SUBJECTS—*Contd*

Subjects.	Remarks.
19. Judicial stamps, subject to Indian legislation as regards amount of court fees levied in relation to suits and proceedings in the High Courts under their Original Jurisdiction.	This limitation is necessary owing to the existing position with regard to fees levied in relation to suits and proceedings on the Original Side of the High Courts under their rules.
20. Registration of deeds and documents, subject to Indian legislation.	
21. Registration of births, deaths and marriages, subject to Indian legislation for such classes as the Indian legislature may determine.	Existing Indian legislation provides for the following classes, <i>viz.</i> , members of every race, sect or tribe to which the Indian Succession Act, 1865, applies, and all persons professing the Christian religion.
22. Religious and charitable endowments.	Bills affecting religion or religious rites or usages will be reserved for the consideration of the Governor-General ( <i>v.</i> paragraph 35).
23. Development of mineral resources which are Government property, subject to rules made or sanctioned by the Secretary of State, but not including the regulation of mines.	
24. Development of industries, including industrial research and technical education.	The report of the Industries Commission has been followed in attaching technical education to the Industries Department,



PROVINCIAL SUBJECTS—*Contd.*

Subjects.	Remarks.
<p>25. Industrial matters included under the following heads :—</p> <ul style="list-style-type: none"> <li>(a) Factories :</li> <li>(b) Settlement of labour disputes :</li> <li>(c) Electricity .</li> <li>(d) Boilers</li> <li>(e) Gas</li> <li>(f) Smoke nuisances ; and</li> <li>(g) Welfare of labour, including provident funds, industrial insurance (general, health and accident) and housing ,</li> </ul> <p>subject as to (a), (b), (c) and (d) to Indian legislation.</p>	<p>Inspectors of Factories, Electricity and Boilers are provincial officers under the control of the local Governments, but we consider that there are strong grounds for maintaining uniformity in regard to the four matters which are made subject to Indian legislation. As regards the other subjects, especially those included under "Welfare of labour," it is desirable to give the provinces freedom of initiative.</p>
<p>26. Adulteration of food-stuffs and other articles, subject to Indian legislation as regards export trade.</p>	
<p>27. Weights and measures, subject to Indian legislation as regards standards.</p>	
<p>28. Ports, except such ports as may be declared by or under Indian legislation to be major ports.</p>	
<p>29. Inland waterways, including shipping and navigation thereon so far as not declared to be under control of the Government of India, but subject as regards inland steam vessels to Indian legislation.</p>	

PROVINCIAL SUBJECTS.—*Contd.*

Subjects.	Remarks.
30. Police, other than railway police.	As regards railway police the provinces will no doubt continue to act as agents of the Government of India, but the control must remain with the Government of India owing to difficulties regarding jurisdiction, and the contributions of the railway companies.
31. Miscellaneous matters:—	The object of including these items in the Provincial List is to give the provinces freedom of legislation in regard to them.
(a) regulation of betting and gambling :	
(b) prevention of cruelty to animals .	
(c) protection of wild birds and animals .	
(d) control of poisons .	
(e) control of motor vehicles, subject to Indian legislation as regards licenses valid throughout British India ; and	
(f) control of dramatic performances and cinematographs.	
32. Control of newspapers and printing presses, subject to Indian legislation.	
33. Coroners.	
34. Criminal tribes, subject to Indian legislation.	

REPORT OF THE FUNCTIONS COMMITTEE.

PROVINCIAL SUBJECTS.—*Contd.*

Subjects.	Remarks.
35. European vagrancy, subject to Indian legislation.	
36. Prisons and reformatories. subject to Indian legislation.	
37. Pounds.	
38. Treasure trove.	
39. Museums (except the Indian Museum and the Victoria Memorial, Calcutta) and zoological gardens.	
40. Government Press.	
41. Franchise and elections for Indian and provincial legislatures, subject to Indian legislation.	
42. Regulation of medical and other professional qualifications and standards, subject to Indian legislation.	Under this head will fall the administration of the existing provincial Medical Registration Acts. Power is reserved to the Indian legislature in order to secure uniformity and maintain the standards of professional qualifications.
43. Control, subject to Indian legislation, of members of All-India services serving within the province, and of other public services within the province.	
44. New provincial taxes, that is to say taxes included in the schedule of additional provincial taxes ( <i>v.</i> paragraph 75), so far as not included under previous heads.	

## THE INDIAN CONSTITUTION.

### PROVINCIAL SUBJECTS—*Contd.*

Subjects.	Remarks.
45. Borrowing of money on the sole credit of the province, subject to Indian legislation.	
46. Imposition of punishments by fine, penalty or imprisonment, for enforcing any law of the province relating to any provincial subject, but subject to Indian legislation where that limitation otherwise applies to such subject.	
47. Any matter which, though falling within an All-India subject, is declared by the Governor-General in Council to be of a merely local or private nature within the province.	

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### Section III.—Transfer of Functions to the charge of Ministers, and Powers of Governor in Council in relation to Transferred Subjects.

#### PART I.—TRANSFER OF FUNCTIONS.

42. Under clause III of our Reference we are required to advise as to which of the functions that are to be discharged by provincial Governments can be transferred at the outset in each province to the charge of Ministers. In considering this question we have borne in mind the principles of selection laid down in paragraph 238 of the Joint Report, and we have treated Illustrative List No. II showing transferred subjects, contained in Appendix II to the Joint Report, as the starting point for our deliberations. We have received from the different provincial Governments proposals with regard to the

## REPORT OF THE FUNCTIONS COMMITTEE.

transfer of subjects which have, in most cases, been prepared with special reference to this List.

43. We have summarised in a schedule (Annexure I) the proposals of the different provincial Governments above referred to. These proposals were, however, in some cases put forward subject to important reservations.

His Excellency the Governor of Madras in Council pre-  
tached his scheme for transfer with a note which we quote in full —

"The views of the Madras Government on the subject of the division of provincial subjects between Ministers and the rest of the Government, as proposed in the Report on Indian Constitutional Reforms, have been set forth in the Hon'ble Mr. Todhunter's letters No. 948, dated 19th October 1918, and No. 1104-A, dated 10th December 1918. As was intimated in those letters the Governor in Council believes that the scheme of dualism outlined in the report is not only unsound in principle but will in practice prove to be unworkable. He decided therefore not to submit any scheme for the division of provincial subjects into two parts. Such a scheme could appropriately be framed only by those who believed diarchy to be both practicable and desirable. As, however, the Government of India have now instructed this Government to prepare such a list and have at the same time conveyed an assurance that the views of the Madras Government, as stated in the letters quoted above, will be placed on the official record of the proceedings of the Reforms Committee dealing with the matter, the subjoined list of transferred subjects is herewith transmitted to that Committee. In transmitting this list to the Committee, His Excellency the Governor in Council requests that, should the Committee desire to include it in any of their published proceedings or reports, the list may be accompanied by the statement that it was framed by this Government in compliance with instructions from the Government of India issued after this Government had expressed their unwillingness to propose any such list.

His Excellency the Governor in Council desires to make it clear that the fact of his framing this list in deference to the wishes of the Government of India must not be taken to indicate that he has in any way withdrawn or receded from the objections he has taken to the whole scheme of diarchy, nor has anything emerged in the course of framing this list which has lessened the objections of the Madras Government to that scheme."

The Government of Bombay in their letter No. 9745 of the 11th November 1918 had submitted to the Government of India an alternative scheme of constitutional reform which involved no division of the Executive Government. They were, they stated, "unable to accept the proposed scheme of Government as one which was likely to work satisfactorily in practice." We understand, however, that one Member of

Council, while concurring with his colleagues in their preference for the alternative scheme, was not prepared to agree in the view expressed as to the scheme in the Joint Report. At the time of our visit the Government still held the same views on the main question, and in the note they prepared for our assistance they say. "Experience of Council Government shows at once that, even as a temporary device, the proposed distribution of functions must fail in its objects. Our suggestions detailed below must therefore be regarded as indicating the best scheme we can put forward in the circumstances."

The Punjab Government were also in favour of an alternative scheme which avoided any division of the functions of the provincial Government. In their letter No. 20432 of the 16th November 1918, to the Government of India, it was expressly stated that His Honour the Lieutenant-Governor's suggestions as regards transfer were in no way to be read as derogating from his previously expressed views on the general question.

The scheme prepared by the Chief Commissioner of the Central Provinces for a period of training for self-government did not involve the appointment of a Minister of the status suggested in the Joint Report, nor the transfer of any functions within the meaning of our reference. His note for the Committee accordingly contained no proposal for any such transfer. In preparing at our request a supplementary note on this part of our reference, he specified the subjects which were, in his opinion, least suitable for transfer if the scheme proposed in the Joint Report were finally approved.

A similar reservation was made by the Chief Commissioner of Assam in paragraphs 33 and 34 of his note on Constitutional Reforms. He there enumerates a number of subjects which he regards as suitable for transfer, either immediately or at a later stage, but qualifies his recommendations in the following terms :—

"It is perhaps unnecessary to point out that what I have written in the last two paragraphs is based upon two assumptions—first, that no subject connected with any of the hill districts is included in the portfolio of a Minister ; secondly, that the Government of Assam is a corporate Executive Council constituted on the plan which has been recommended both by the Hon'ble Mr. Chanda and by myself. I have therefore refrained from using the expressions 'transferred' and 'reserved,' which are not strictly applicable to our scheme."

In his oral evidence, however, the Chief Commissioner stated that, even if the scheme of the Joint Report was adopted, he was ready to adhere to his classification of subjects, so far as the more advanced portions of the province were concerned.

44. A great part of the evidence which we heard in the course of our provincial tour was directed to the question of transfer. In addition to the views of the provincial Governments, which were as a rule put forward by officers appearing as witnesses on their behalf, we received a great mass of information bearing on the work of different departments in the form of written memoranda prepared at our request by the officials concerned. A large number of the officials who appeared before us as witnesses expressed to us their personal views on the suitability of their own departments for transfer, and the advantages or disadvantages which were likely to result from transfer or reservation as the case might be. The non-official evidence tended to concentrate itself on this part of our reference. We received from non-official witnesses written statements giving their personal views, or the views of the associations which they represented, both on the more general aspects of the question and on the suitability of particular subjects for transfer, and stress was also laid on the special circumstances of their own provinces. We examined a number of these witnesses at length on the views expressed in their written statements. The evidence necessarily ranged over a wide field and it is not possible to convey its effect in a summary, but on the completion of our tour we were in possession of a great quantity of material, which has been of assistance to us in applying to the different subjects the criteria laid down for our guidance in paragraph 238 of the Joint Report, and in judging of the weight to be given to special considerations affecting individual provinces.

45. The conclusions which we have formed on the question of transfer will be found in the list of subjects for transfer which forms Part 3 of this Section of the Report. We do not propose to deal at length with the great variety of issues involved in the preparation of this list, but there are certain points to which it is necessary to refer in order to explain departures from proposals contained in Illustrative List No. II.

(1) *Education*.—We refer first to the subject of Educa-

tion. In dealing with this subject, we have borne in mind the paragraphs of the Joint Report relating to it, especially paragraphs 186 and 187. The suggestion in the Illustrative List is that university education should be reserved while education falling under the following heads—primary, secondary and technical—should be transferred. We have received suggestions for making various divisions of the subject of Education, but we have come to the conclusion that the problem should be treated as a whole, and that any division of education, such as would result from the transfer of primary apart from secondary and university education, or from the transfer of primary and secondary apart from university education, is unsound in theory and would be unworkable in practice. The actual drawing of the line between either primary and secondary or secondary and university education involves many difficult questions, and any such line, if made the basis of a division, would be bound to produce serious administrative complications. We feel that there is great force in the observation in paragraph 186 of the Joint Report that “the main defect of the system (*i.e.*, the existing system of education) is probably the want of co-ordination between primary and higher education, which in turn reacts upon the efficiency of secondary institutions and, to a great extent, confines university colleges to the unsatisfactory function of mere finishing schools.” We have already referred to the recommendations of the Calcutta University Commission, which have an important bearing on the question of the possibility of a division between secondary and university education. We think the situation is fairly summed up in the following sentences extracted from the Fifth Quinquennial Review on the progress of Education in Bengal (paragraph 299) by Mr. W. W. Hornell, who is a member of the Calcutta University Commission :—

“The existing educational system of India is an organic whole, no part of which can be modified without affecting vitally the other parts..... It is impossible to attack the problem by compartments. Secondary education depends upon primary education and university education upon both.”

We have therefore recommended the transfer of education as a whole, subject to the special provisions as to university legislation which are dealt with in paragraph 15, and to the further provisions proposed in the case of Bengal.



It will be seen, however, that we propose to exclude from the transfer European and Anglo-Indian education. Special considerations apply to this part of the educational system, which is organized on a separate basis of its own, and no serious administrative difficulties will arise owing to the reservation of this branch of the work of provincial Education Departments while the rest of their work is transferred.

It is further proposed that special duties in relation to educational matters shall be laid upon the Governor by his Instructions, for the purpose of safe-guarding the interests of certain classes and institutions (v. paragraph 67).

With regard to technical education, it will be seen that we have assumed that the advice of the Industrial Commission to the effect that technical education should be dealt with by the Department of Industries will be adopted, and we have included it under the general head of 'Development of Industries' as a transferred subject.

(2) *Forests and Irrigation*—There are two other subjects in regard to which suggestions have been made for a division of administration, namely Forests and Irrigation. Illustrative List II of the Joint Report proposes the transfer of "unclassed and some protected" forests and of "minor irrigation". In both these cases the division would involve placing one service under the control of two authorities in respect of different parts of its work between which no clear distinction is possible. In the case of both Forests and Irrigation, it is possible to detach part of the subject-matter and place it under the administration of a local authority. We contemplate the adoption of a plan whereby forests which mainly serve the needs of a village or group of villages may be placed under the management of a panchayat or other local authority (*vide* No. 10 Transfer List). In the case of Irrigation local authorities already in some places have powers regarding drainage and canals of merely local importance, and in Madras and the Punjab there is a recognised class of "minor irrigation works" which are controlled by the Revenue Department; but the distinction between major and minor works as known to the Irrigation Department cannot be accepted as a basis for division. The memorandum furnished to us by the Public Works Department of the Government of India deals with this point as follows: "This classification does not, as might be expect-

ed, bear reference to the size or importance of the works, but only to the source from which the funds are provided. All works constructed from loan funds or from the annual Government of India grant for famine relief and insurance are classed as major, all other works, financed from the general revenues of the country, are classed as minor. Thus the Fuleli Canal in Sind, which irrigates 400,000 acres, is a minor work, while the Khairadatan tank in the Central Provinces, built at a cost of Rs. 90,000 to irrigate 2,500 acres, is a major work. Any division on these lines is therefore meaningless."

(3) *Industries*.—As regards Industries we have not found it possible to draw any clear line between "local" and other industries. Any distinction based on relative importance is rendered difficult by the inter-connection of all industrial matters. The only division we have found possible is between the development of industries (No. 24 Provincial List) and the administration of industrial laws (No. 25 Provincial List). The former is recommended for transfer, and the latter for reservation.

46. Several of our Members (Sir Chimanlal Setalvad, Dr. Sapru and Sir Rahim Bakhsh) urged that Land Revenue administration, and with it Irrigation, should be made a transferred subject in Bombay and pointed to the exceptional conditions surrounding the subject in that province. Sir Rahim Bakhsh urged such transfer in respect of the Presidency proper, but excluded Sind. The majority of the Committee could not support the suggested transfer, and, in order to secure unanimity, the minority decided not to dissent. The members of the minority wish, however, to record their desire for transfer in the special case of Bombay, and also an expression of their earnest hope that, in the next revision of the constitution, the whole question should be thoroughly investigated with a view to making Land Revenue administration a transferred subject not merely in Bombay but in the rest of the provinces.

47. It will be observed that we propose that Irrigation should be a reserved subject in all provinces.

Special considerations apply to Bengal. The intimate relation between land revenue and irrigation in other provinces has, apart from any other consideration, precluded us from recommending the transfer of irrigation, though the reserva-

tion of this subject involves the division of the Public Works Department, which may cause administrative inconvenience in provinces where the two branches of that department—Roads and Buildings and Irrigation—have hitherto worked with a joint establishment. In Bengal the existence of the permanent settlement fundamentally alters the situation, and irrigation work properly so-called is on a comparatively small scale. The Irrigation Department of the Presidency is mainly concerned with drainage, embankments and waterways, and these have a very close connection with problems of sanitation and local self-government. The control of waterways, however, in the network of rivers and channels that spreads over a great part of Bengal raises questions of the greatest difficulty, and mistakes made in comparatively small matters may have far-reaching consequences. The question of control has been under discussion for many years, and proposals, not yet formulated in detail, have been made for the formation of a Waterways Trust, which would probably have its own staff of engineers, and the Government of Bengal consider that if such a Trust were constituted it should be directly under the Government of India. This contemplated Trust would necessarily involve great administrative changes. Notwithstanding, therefore, the separation of irrigation from land revenue in Bengal, and its connection with sanitation and local self-government, we have not been able to recommend the transfer of irrigation in that Presidency.

48. There are certain subjects included in the Provincial List which cannot in themselves be either reserved or transferred, and to these we must briefly refer :—

- (1) Public Services (No. 43 in Provincial List). The Section on Public Services defines the position with regard to the authority of Ministers over members of the public services employed in transferred departments.
- (2) Financial matters.—Additional provincial taxes, and provincial borrowing (Nos. 44 and 45 in Provincial List). The position with regard to these matters is stated in the Section on Finance (paragraphs 75—80).
- (3) Imposition of punishments by fine, penalty or imprisonment for enforcing any law of the

province relating to any provincial subject, but subject to Indian legislation where that limitation otherwise applies to such subject (No. 46 in Provincial List).

This subject is included in the list for the purpose of defining the legislative powers of the province, but will not form a separate subject for purposes of administration.

- (4) Any matter which, though falling within an All-India subject, is declared by the Governor-General in Council to be of a merely local or private nature within the province (No. 47 in Provincial List).

Any new subject allotted to the province under this general provision will be assigned by the Governor either to a reserved or to a transferred department under the power to be given to him in accordance with paragraph 239 of the Joint Report.

49. It is necessary to refer to certain features which in the two provinces of Assam and Bihar and Orissa complicate the questions we have to consider.

In Assam, two-thirds of the whole province are included in hill and frontier tracts, inhabited by simple tribes, governed in patriarchal fashion. These tracts are not represented in the Legislative Council, and local self-government is unknown, except in the municipality of Shillong. At the same time, as the Chief Commissioner points out in paragraph 5 of his note, the Legislative Council has power at present to pass laws which may be applied to the hill tracts, the administration of the hills must be financed from the plains, and the Legislative Council has in the past discussed the budget provision for the hills. He is unwilling to deprive the Council of such rights as it has hitherto enjoyed, and therefore proposes a solution which leaves the Council some semblance of power in respect of these areas, but at the same time he would maintain the existing special methods of control over legislation which appear to us to be inconsistent with any real recognition of the Council's authority.

In our view, if these special methods of control are necessary (and we do not question the opinion of the Chief Com-

missioner on this point), it is better not to make the pretence of bringing the tracts in which they are required within the scope of the Reform scheme. We have not been able to find any satisfactory *via media* between inclusion and exclusion, and it is not clear that the reservation of *all* subjects in *particular* areas is a course which was contemplated by the authors of the Joint Report. We recommend therefore that the tracts in question should be excluded from the jurisdiction of the reformed provincial Government. If our recommendation is accepted, they will be administered by the Governor himself, as proposed in paragraph 199 of the Joint Report.

The exclusion of these hill tracts has an important bearing on our recommendations for transfer in the Assam and Surma Valleys. The question of the transfer of Forests, for example, hardly arises in a province where the greater part of the work of the department lies in excluded areas.

It is much the same with Public Works. Among the most important duties of this department are the construction and maintenance of hill and frontier roads, while, if the proposals of the Public Works Department Re-organization Committee are accepted, the work in connection with roads and buildings in the valleys will be entrusted even more fully than at present to local boards and municipalities.

In the case of Excise, too, the existence of these excluded areas is a determining factor. The opium habit is strong in the population of the Assam Valley, and there is a large consumption of liquor among the coolies of the tea gardens. Both these habits are unfortunately spreading among the hill tribes. Government has done all that it can to check them, but the success of its efforts depends largely on unified control of policy throughout the province. Any weakening of the policy in the plains would necessitate a tightening of control in the hills, where restrictions are difficult to enforce and apt to be resented. Apart from this, the liquor problem in the tea gardens presents special difficulties. Even as it is, constant complaints are received from the managers of gardens in regard to the location of shops, and it is thought that the difficulties might be increased if the subject were transferred.

It should be noted that in view of the difficulties of communication between the two valleys—the Assam Valley and the Valley of the Surma—their lack of common interests and

the different characteristics, religious and racial, of their respective populations, the Chief Commissioner thought it advisable to provide in the scheme he submitted for what almost amounts to a separate administration for each valley. We do not regard it as possible to give effect to this scheme, but we understood from the Chief Commissioner that his recommendations as to transfer were not dependent on its adoption.

50. The position in Bihar and Orissa is somewhat similar. It is fully explained in two letters from the Government of that province, which are printed in Appendix V. The first of these, No. 4097-P., dated the 9th November 1918, was addressed to the Government of India in the Home Department. The second, No. 33-C., of the 6th January 1919, was written in reply to certain enquiries made by us after we had heard the provincial evidence. The backward areas comprise 8 districts out of a total of 21. Their extent is rather less than half the total area of the province, and they contain about a quarter of the whole population.

The proposals made by the local Government in the earlier of their two letters are (1) that the Santal Parganas and Angul, which are the most backward of all the districts in question and are now outside the pale of the ordinary administration, should be excluded altogether from the scope of the Reform scheme and the jurisdiction of the Legislative Council, and should continue to be administered by the Governor in Council, and (2) that "no hard and fast distinction between ordinary districts and the scheduled districts of Chota Nagpur and Sambalpur" should be made "in respect either of legislation or of administration," but that authority should be conferred "by statute on the Governor in Council

- (1) to prescribe by notification the portions of the scheduled districts, if any, to which any Act or portion of an Act passed by the Legislative Council shall apply ; and
- (2) to decide to what portions of the scheduled districts, if any, the jurisdiction of the Minister in respect of any of the transferred subjects or any portion of them shall extend, and when such jurisdiction has been extended, to exclude any portion of the scheduled districts from the application of any order passed by the Minister."

The enquiries in reply to which the second letter was written related to the special purposes for which the Governor in Council should have power to intervene in transferred subjects, with a view to the protection of the primitive inhabitants of the Chota Nagpur and Sambalpur areas, which the local Government proposed to include within the scope of the Reforms scheme, subject to the above safeguards.

The local Government in their reply state that these purposes are general rather than special, and that it is their intention that the power to intervene should be purely discretionary. If such power cannot be given, all the backward areas should be excluded, without exception.

We have been much impressed by the arguments which have been put forward ; but, as we have stated in the preceding paragraph, we can find no *via media* between inclusion and exclusion.

At the same time, the exclusion of Chota Nagpur and Sambalpur is open to one objection which does not apply in the case of the hill tracts of Assam. They have representatives in the present Council and will have more in the reformed Council, if the recommendations of the Franchise Committee are accepted. Their presence may perhaps be justified by the fact that the policy pursued in the more advanced areas will necessarily react on these districts, even if excluded. The question as to whether there are portions of the latter which are in themselves fit for inclusion in the scheme, and could therefore be made the subject of separate treatment, will no doubt receive consideration from the local Government.

In the case of Assam, we found that the problems connected with the backward areas had an important bearing on our recommendations for transfer in the rest of the province, and we have in consequence been unable to advise the transfer either of Excise or Public Works. In Bihar and Orissa we have not been asked by the local Government to make any such allowances in framing our recommendations for transfer of subjects in the more advanced portions of the province, nor have we thought it necessary to do so.

51. Mr. Couchman, after examining the proposals of the Franchise Committee for Madras, which were supplied to him

on the 22nd February, feels unable to recommend the transfer of any subject in Madras. He feels that without—

(1) communal representation for non-Brahman caste Hindus,

(2) adequate representation of Panchamas and rural areas, and

(3) residential qualifications for candidates,  
it is inevitable that the Brahman minority will capture a large majority of the seats, and that the interests of the masses would not be safe in their hands.

He is prepared to give detailed arguments in support of his views to the Government of India or to the Right Honourable the Secretary of State if so desired.

#### PART 2.—POWERS OF THE GOVERNOR IN COUNCIL IN RELATION TO TRANSFERRED SUBJECTS.

52. Clause III (2) of the Reference to the Committee requires us to advise as to 'the powers which should be exercised by the Governor in Council in relation to transferred subjects and the grounds on which, and the manner in which, these powers should be exercised', and refers to paragraph 240 of the Joint Report. This paragraph is also referred to in clause I of the Reference as enunciating principles by which the Committee is to be guided.

53. The question of the authority of the Governor himself in regard to transferred subjects is not expressly referred to the Committee, but it is impossible for the Committee to deal with the position as regards intervention by the Governor in Council without making some assumption as to the power to be exercised by the Governor himself. This question therefore arises incidentally.

54. Paragraph 221 of the Joint Report has an important bearing on the questions which we are now considering. This paragraph says—"There are questions upon which the functions of the two portions of the Government will touch, or overlap, such, for instance, as decisions on the budget or on many matters of administration. On these questions, in case of difference of opinion between the Ministers and the Executive Council, it will be the Governor who decides."



## REPORT OF THE FUNCTIONS COMMITTEE.

Some of the cases of intervention specially contemplated in paragraph 240, that is to say, intervention in matters which concern law and order, or which raise religious or racial issues, or where the interests of existing services require protection, will certainly fall under the head of cases in which the functions of the two portions of the Government touch or overlap.

55. Paragraph 240, if taken literally, might seem to involve an arrangement whereby the Governor in Council would, in such cases, sit as a sort of Court of Appeal or Review on decisions of the Governor and Ministers, with power, if necessary, to take direct action in the administration of transferred departments for the purpose of giving effect to the conclusions arrived at on such appeal or review. Such a plan is not easy to reconcile with the proposals contained in paragraph 221, and would seem to involve an open interference with a Minister in the conduct of the transferred department, of which he still remained nominally in charge. Some of the objections to this plan are indicated in the Government of India Memorandum on the services (Annexure IV, paragraph 17).

56. It will be well to consider at this stage more closely what is to be the list of matters as to which some special safeguard is to be required on the lines indicated in paragraph 240, by action either of the Governor, or of the Governor in Council. The paragraph mentions—

Law and Order,

Religious and racial issues,

Interests of existing services.

Subsequent paragraphs of the Report suggest that special safeguards should also be provided for protecting missionary institutions (paragraph 345), for protecting the position of the Anglo-Indian community (paragraph 346) and for securing industries against unfair discrimination (paragraph 344). We think that clauses should be inserted in the Governor's Instructions dealing with the various points on which special safeguards are required. Draft clauses on the different points referred to are contained in a later paragraph (*vide* paragraph 67).

57. Paragraph 240 refers only to questions of administra-

tion, but in dealing with this matter it is necessary to bear in mind the proposals in paragraphs 252-254 as to legislation and in paragraphs 255-257 as to the budget. The proposal as to the Governor's power of certifying legislation in paragraph 252 suggests that his certificate should refer to his "responsibility for the peace or tranquillity of his province or any part thereof", and to his "responsibility for the reserved subjects."

58. Taking the situation as a whole, it is apparent that the questions arising in relation to matters intended to be safeguarded under some plan to be devised under paragraph 240 will sometimes be questions which, owing to their contact with reserved subjects, must be treated as mixed questions, and might therefore be held to fall under the provisions of paragraph 221 above referred to, and will sometimes be matters not affecting in any definite way the functions of reserved departments, but involving the Governor's special responsibility under his Instructions. It is necessary to distinguish in any plan proposed between these two classes of cases.

59. We will deal first with cases affecting both reserved and transferred departments, to which it will be convenient to refer throughout as "mixed cases" or "mixed questions." These must be considered in the light of paragraph 221, as well as of paragraph 240. It seems desirable to lay down the general principle that the rule with regard to "mixed cases" should, as far as possible, be uniform. It would be difficult, if not impossible, to draw any clear line of distinction between cases arising in a reserved department which affect the administration of a transferred department and cases arising in a transferred department which affect the administration of a reserved department, or to frame a satisfactory and workable rule based on such a distinction.

60. Our proposal, based on this principle, is that, where the functions of reserved and transferred departments touch or overlap, or where the action taken in one department is of such a nature as to affect the interests of the other, the following procedure should be followed :—

(1) The Minister or Member of Council may ask for papers on action taken or proposed to be taken in matters affecting his department.

(2) The matter will be discussed between the Member of Council and the Minister concerned.

(3) If they fail to agree, one or the other will refer the matter to the Governor.

(4) The Governor will see both Member and Minister, either separately or together.

(5) If he fails to settle the matter between them, he will summon a joint meeting of the two sections of the Government, where the matter will be discussed but no vote will be taken.

(6) If, after the discussion, there is still disagreement, the Governor will decide the matter. If his decision involves action by a reserved department, he must obtain the concurrence of his Council in such action or override his Council under section 50 of the Government of India Act. If the decision taken requires action by the transferred department, the Governor must require the Minister to comply with the decision and to take the action decided on.

(7) If the Minister yields at this stage to persuasion, the action will be taken in the ordinary way by the Governor and the Minister, and the Minister will be responsible for the action taken and will have to defend it in the Legislative Council. If, however, the Minister is obdurate, the Governor will have to dismiss him and find another Minister.

(8) Provision must be made for emergencies in which it will be necessary for immediate action to be taken in relation to a transferred department before another Minister is found to take office. If such an emergency exists, the Governor will certify that the emergency does exist and that immediate action is necessary. On such certificate being given, the Governor in Council will have authority to take action, subject to the obligation of reporting to the Governor-General in Council. If, however, action can be postponed till a new Minister has accepted office, the Governor will appoint the new Minister on the understanding that he will concur in the necessary action, and the action will be taken after his appointment in the ordinary way by the Governor and Ministers.

If this plan is accepted it will be observed that the Governor in Council will only take action in a transferred department in the event of there being an emergency which necessitates action during a ministerial vacancy. That will be the only

case of re-entry as long as the department remains a transferred department. Such re-entry will be for a temporary and limited purpose during an interregnum when there is no \* Minister. Such an interregnum will not normally be long.

61. It is necessary to note that this proposal involves a departure from paragraph 218 of the Joint Report, which proposes that Ministers shall hold office for the lifetime of the Legislative Council. Our proposal assumes that Ministers will hold office during the Governor's pleasure, and that he will have power to dismiss them. This seems essential if deadlocks are to be avoided.

62. There appear to be three main advantages in the plan above proposed. (1) The Minister will never be in the position of being formally overridden by the Governor in Council. If he yields on a point on which his policy comes into conflict with the Governor in Council, he will yield, not to a resolution passed by the official section of the Government, but to the personal judgment of the Governor who is associated with both sections of the Government. (2) The Minister will always be responsible for action in the transferred department in his charge even where such action is deflected by considerations affecting reserved departments. There is a vast difference between responsibility for action in the transferred department, as deflected by such considerations, and direct responsibility for the conduct of the reserved departments, from which it is of the essence of the scheme that the Minister shall be kept free. It is difficult to contemplate such an intermittent responsibility for a transferred department as is involved in the conception of a Minister in his own department being overruled by another authority, and repudiating any responsibility for the action taken, while still continuing to hold office. (3) The overruling of a Minister will always depend in the last resort on the Governor's personal judgment of the situation. The Governor, it may be assumed, will practically never force a view upon a Minister in a matter affecting a reserved subject unless he knows that he has the support of his Executive Council. At the same time he will never be bound, at the bidding of his Executive Council, to take up a position which may force his Minister to resignation, break up his Government and produce a crisis in the Legislative Council.

It may be noted that, in the case of legislation, the Governor alone has to certify under the scheme of the Joint

Report, so that this proposal may be said to give him responsibility as to administration similar to that already proposed in the case of legislation.

63. In pursuance of the plan outlined above we propose that, for the purpose of regulating the relations between the two portions of the Government and defining the authority of the Governor, rules should be laid down to the following effect .—

(1) It shall be the duty of the Governor in Council in the case of reserved departments, and of the Governor and Ministers in the case of transferred departments, to take care that the administration is so conducted as not to prejudice or occasion undue interference with the working of any department falling in the other category, and so as not to cast any undue burden upon officers serving under the other department.

(The object of this clause is to lay down a general rule of a reciprocal character as to the relations between the two sections of the Government.)

(2) It shall be the duty of the Governor—

(a) to decide any question which may arise as to whether a particular matter falls within the scope of a reserved or of a transferred department (*cf.* paragraph 239 of the Joint Report):

(b) to take care that any order given by the Governor-General in Council is complied with by the department concerned, whether such department is reserved or transferred, and

(c) in the case of disagreement between the Executive Council and Ministers as to action to be taken in any matter which appears to the Governor to affect both a reserved and a transferred department, to give, after due consideration of the advice tendered to him, such decision as the interests of good government may seem to require, provided that, in so far as circumstances admit, before such decision is given, the matter shall be considered by both sections of the Government sitting together.

(3) The Governor's decision in such cases shall be duly recorded and thereafter the matter shall be dealt with in accordance therewith, in the case of action required in a

reserved department by the Governor in Council, subject to the provisions of section 50 of the Government of India Act, and in the case of action required in a transferred department by the Governor and Ministers.

(4) If, owing to a vacancy, there is no Minister in charge of a transferred department, and it shall appear to the Governor that it is necessary, by reason of some emergency, to take action in regard to such department notwithstanding such vacancy, the Governor shall certify accordingly, and thereupon it shall be competent for the Governor in Council to take action in regard to such transferred department in the same way as if the department were a reserved department, but only while such emergency continues and such vacancy remains unfilled, and a copy of the Governor's certificate and the particulars of any action so taken shall be forwarded forthwith for the information of the Governor-General in Council.

64. The effect of the Committee's proposals as to the Public Services contained in paragraph 70 will be that the special matters affecting the services on which joint deliberation is to be required will be treated as if they all were, as many of them in fact will be, matters which affect both reserved and transferred departments. Certain other matters referred to in the same paragraph, *e. g.*, the control of services whose pay is debited to more than one head, and alteration in the rules for recruitment when they affect a transferred department, will also fall to be dealt with as "mixed cases."

65. Paragraphs 77, 79 and 80 of the section on Finance contain proposals as the extent to which the rules above suggested for dealing with "mixed cases" should apply to financial matters.

66. The other class of cases contemplated by paragraph 240 remains to be considered, namely cases which are not regarded by the Governor as affecting both reserved and transferred departments, and therefore do not rank as "mixed cases," but which involve matters which the Governor is specially required to safeguard.

In these cases the necessity for joint deliberation will not arise. It will be for the Governor to discharge the responsibilities specially laid upon him by his Instructions, and, if necessary, for this purpose to overrule either his Executive Council or his Ministers. The position as to giving effect to his decision will be the same as in "mixed cases", that is, it

will have to be carried out by that portion of the Government which is immediately concerned. It will always be open to the Governor to submit the matter for joint deliberation, if he so chooses, but there will be no rule requiring him to do so. Should he unfortunately find himself in disagreement with a Minister in some matter in which, in view of his special responsibility under his Instructions, he felt it his duty to insist on his own opinion even at the cost of losing his Minister, and should the Minister resign, then the work of the transferred department during any interval that ensued before a new Minister was appointed would, if the emergency required it, have to be carried on under the authority of the Governor in Council pending the appointment of the new Minister, in accordance with the provisions suggested in paragraph 63 (4) of this Report.

67. We recommend that clauses to the following effect should be inserted in the Governor's Instructions. We have already referred to the various matters as to which it has been suggested in the Joint Report that special safeguards are required, and have indicated the manner in which effect may be given to such Instructions (*vide* paragraphs 56, 66) :—

- “(1) The Governor shall be specially charged with the responsibility of maintaining peace and tranquillity within his province, and of preventing occasions of religious or racial conflict (*cf.* paragraph 240 of the Joint Report).
- (2) The Governor shall not sanction the grant of monopolies or special privileges to private undertakings which are inconsistent with the public interest, nor shall he permit any unfair discrimination in matters affecting commercial or industrial interests (*cf.* paragraph 344 of the Joint Report).
- (3) The Governor shall be charged with the duty of safeguarding the legitimate interests of the Anglo-Indian or Domiciled Community (*cf.* paragraph 346 of the Joint Report).
- (4) It shall be the duty of the Governor to protect all members of the Public Services in the legitimate exercise of their functions and enjoyment of all recognized rights and privileges (*cf.* paragraphs 240 and 325 of the Joint Report).”

It is recommended that, in order to provide for the protection of special interests in educational matters, clauses should also be included in the Governor's Instructions, requiring him—

- (1) to secure that any existing educational facilities specially provided by the provincial Government for the benefit of Muhammadans shall not in the aggregate be diminished ;
- (2) to take care that no change of educational policy, affecting adversely Government assistance afforded to existing institutions maintained or controlled by religious bodies, is adopted without due consideration (*cf.* paragraphs 240 and 345 of the Joint Report) ; and
- (3) (in the case of Madras only) to secure that due provision is made for the educational advancement of depressed and backward classes.

*Note.*—Mr. Couchman and Mr. Thompson agree with the greater part of Section III, Part 2. They are of opinion, however, that the correct interpretation of those portions of paragraph 221 and paragraph 240 of the Joint Report which are referred to in paragraph 54 is that, while in all ordinary cases of overlapping paragraph 221 would apply and the Governor would decide, it is not impossible that extreme cases might arise which would justify the exceptional procedure suggested in paragraph 240. In these cases, the Governor in Council would have power to intervene with full effect.

Mr. Couchman and Mr. Thompson think it most important that the Governor in Council should have this power in extreme cases where the maintenance of law and order is at stake, and would therefore entrust the final decision in such cases to the Governor in Council rather than to the Governor personally. They would add at the end of the first sentence of paragraph 60 (6) the words "unless a member of Council asks that the matter should be decided by the Governor in Council, on the ground that the maintenance of law and order is seriously imperilled." If the Minister, after full consideration, declined to identify himself with the orders, they would issue in the name of the Governor in Council,



# REPORT OF THE FUNCTIONS COMMITTEE.

## PART 3.—LIST OF PROVINCIAL SUBJECTS FOR TRANSFER.

Serial No.	Number in provincial list.	Subjects.	Provinces in which transferred	REMARKS
1	1	Local self-government, that is to say, matters relating to the constitution and powers of municipal corporations, improvement trusts, district boards, mining boards of health and other local authorities established in the province for purposes of local self-government, exclusive of matters arising under the Cantonments Act, and subject to Indian legislation ( <i>a</i> ) as regards powers of such authorities to borrow, otherwise than from a provincial Government, and ( <i>b</i> ) as regards the levying by such authorities of taxation not included in the schedule of municipal and local taxation (paragraph 82).	In all provinces.	<p>It is contemplated that other matters will from time to time be entrusted to local authorities by legislation; where such matters form part of "reserved subjects" the Bill will be reserved for the consideration of the Governor-General (<i>vide</i> paragraph 36).</p> <p>The question of control, if any, to be exercised over policemen or watchmen by local authorities should be left to be determined by provincial legislation relating to local self-government.</p> <p>Pounds, where they are managed by local authorities, will come under local self-government.</p>
2	2	Medical administration, including hospitals, dispensaries and asylums and provision for medical education.	In all provinces	It will be noted that it is proposed to reserve "Regulation of medical and other professional qualifications and standards," and to make this matter subject to Indian legislation ( <i>vide</i> Provincial

# THE INDIAN CONSTITUTION.

Serial No.	Number in provincial list.	Subjects.	Provinces in which transferred	REMARKS
3	3	Public health and sanitation and vital statistics.	In all provinces	<p>List, item 42) The administration of the Medical Registration Acts will thus be reserved, and the power of securing uniformity of standards will remain with the Indian legislature.</p> <p>"Port quarantine and marine hospitals" is an All-India subject</p> <p>The Sanitary Department will be responsible for the compilation of vital statistics, but at present in most provinces will have to rely on the services of other departments for their collection.</p>
4	4	<p>Education, other than European and Anglo-Indian education, (excluding—</p> <p>(1) the Benares Hindu University, and</p> <p>(2) Chiefs' Colleges) subject to Indian legislation—</p> <p>(a) controlling the establishment, and regulating the constitutions and functions of new universities ;</p>	In all provinces.	<p>Reformatory schools which are controlled by the Education Department should, subject to the concurrence of the Governor in Council in the continuance of this arrangement, be included in the transfer.</p> <p>It is suggested that the Governor shall be required to have special regard to certain interests in education (<i>vide</i> paragraph 67).</p>



# THE INDIAN CONSTITUTION.

Serial No	Number in provincial list.	Subjects	Provinces in which transferred.	REMARKS.
		other than tramways within municipal areas, in so far as provision is made for their construction and management by provincial legislation in accordance with procedure to be prescribed by standing orders of the provincial Legislative Council.		
6	9	Agriculture, including research institutes, experimental and demonstration farms, introduction of improved methods, provision for agricultural education, protection against destructive insects and pests and prevention of plant diseases	In all provinces	<i>Wide</i> note to item 9, Provincial List.
7	10	Civil Veterinary Department, including provision for veterinary training, improvement of stock and prevention of animal diseases.	In all provinces.	<i>Wide</i> note to item 10, Provincial List.
8	11	Fisheries.	In all provinces except Assam.	In Assam the restrictive measures taken for the protection of fish have been unpopular, and the administration of fisheries is closely connected with

# REPORT OF THE FUNCTIONS COMMITTEE.

Serial No	Number in provincial list.	Subjects.	Provinces in which transferred.	REMARKS.
				<p>the Land Revenue Department</p> <p>Mr Couchman would reserve Fisheries in Madras. He feels that this subject, which is of great importance to the poorer classes of the population, would, if transferred, not receive sufficient attention in Madras, as the higher castes, who take the leading part in political life in that Presidency, do not themselves eat fish and have so far displayed little interest in the subject of Fisheries.</p> <p>The Committee consider that this subject should not be separated from the subjects of Industrial Development and Co-operative Credit, with which in Madras it is intimately connected.</p>
9	12	Co-operative Societies, subject to Indian legislation	In all provinces	
10	13	Forests, including preservation of game therein.	In Bombay only	The existing powers of the Governor-General in Council under the

# THE INDIAN CONSTITUTION.

Serial No.	Number in provincial list	Subjects	Provinces in which transferred.	REMARKS
				<p>Forest Act will remain, and any provincial legislation affecting them will be subject to previous sanction</p> <p>The Committee consider that any division of the work of the Forest Department is undesirable, but, in places where the main purpose of a forest is to supply the needs of a village or a group of villages, the plan of entrusting the control of the forest to a village committee, panchayat or other local authority, on lines similar to those on which the experiment has been tried in Madras, might be adopted. It will be open to a provincial legislature by amendment of provincial laws relating to local self-government to provide for the adoption of this plan where circumstances render it suitable (<i>vide</i> paragraph 45).</p> <p>The Committee's general conclusion is that this subject,</p>

# REPORT OF THE FUNCTIONS COMMITTEE.

Serial No.	Number in provincial list.	Subjects	Provinces in which transferred	REMARKS
II	15	Excise, that is to say the control of production, manufacture, possession, transport, purchase and sale of alcoholic liquor and intoxicating drugs, and the levying of excise duties and license fees on or in relation to such articles, but excluding, in the case of opium, control of cultivation, manufacture and sale for export.	In all provinces except Assam.	<p>Forests, is not suitable for transfer at the outset. In Bombay however, the Government have proposed the transfer of Forests. The Committee have taken this proposal into account, and also the special circumstances of Bombay, among which may be mentioned the fact that there are no large tracts of forest in excluded areas. They think there is some advantage in trying the experiment of transfer in one province, and regard Bombay as the most suitable province to select.</p> <p>As to Assam, <i>vide</i> paragraph 49.</p> <p>With reference to the proposed restriction of the purposes for which the Government of India will exercise their power to intervene in transferred subjects (<i>v.</i> paragraphs 16-17), the following points affecting Excise require special mention:—</p>

# THE INDIAN CONSTITUTION.

Serial No.	Number of provincial list.	Subjects.	Provinces in which transferred	REMARKS.
				<p>(1) The power of the Government of India to safeguard the administration of customs revenue will involve power to control the incidence of excise revenue (i) on any liquor which is likely to compete directly with imported liquor, and (ii) on any article imported into British India which is liable on importation to the payment of customs duty.</p> <p>(2) With regard to provincial action restricting the introduction into a province of excisable articles the position will be as follows .—</p> <p>The Government of India will be entitled to intervene, in the case of excisable articles imported from outside British India, to protect their customs duties, and, in the case of excisable articles in transit from or to other provinces, territories and States of India, for the purpose of protecting the interests of such other pro-</p>



# REPORT OF THE FUNCTIONS COMMITTEE.

Serial No.	Number of provincial list.	Subjects.	Provinces in which transferred.	REMARKS
				<p>vinces, territories or States</p> <p>(3) The Government of India will be entitled to intervene in matters affecting the supply of excisable articles to His Majesty's forces.</p> <p>In Madras and Bombay, Excise, Salt and Customs are dealt with under a unified system of administration. Salt and Customs are All-India subjects, and the question of making arrangements for the separate administration of these subjects when the transfer of Excise takes effect will require consideration by the Government of India.</p> <p>Mr. Couchman would not transfer Excise in Madras. In view of the importance of Excise as a source of revenue in Madras, he thinks it would be unwise to jeopardize it. He is also apprehensive that popular control of the liquor traffic may lead to an increase in drunkenness and crime in Madras, and points</p>

# THE INDIAN CONSTITUTION.

Serial No.	Number of provincial list.	Subjects.	Provinces in which transferred.	REMARKS
				to the experience of Pondicherry, where the consumption per head of population is nearly fifteen times that of the adjoining portions of the Madras Presidency
12	20	Registration of deeds and documents, subject to Indian legislation.	In all provinces	The Committee do not consider that the position in Madras is such as to justify the reservation of this subject.
13	21	Registration of births, deaths and marriages, subject to Indian legislation for such classes as the Indian legislature may determine.	In all provinces.	<i>Vide</i> note to item 21, Provincial List
14	22	Religious and charitable endowments.	In all provinces.	<i>Vide</i> paragraph 15.
15	24	Development of industries, including industrial research and technical education	In all provinces.	The Committee have been unable to draw any dividing line between "local" and other industries ( <i>vide</i> paragraph 45).
16	26	Adulteration of food-stuffs and other articles, subject to Indian legislation as regards export trade.	In all provinces.	It is considered that the functions of the provincial Government under this head will mainly be discharged through or in conjunc-

## REPORT OF THE FUNCTIONS COMMITTEE.

Serial No.	Number of provincial list	Subjects	Provinces in which transferred.	REMARKS.
17	27	Weights and measures, subject to Indian legislation as regards standards.	In all provinces.	tion with local authorities.
18	39	Museums (except the Indian Museum and the Victoria Memorial, Calcutta) and Zoological Gardens.	In all provinces.	

### Section IV—Public Services.

68 We propose to deal in this section of our Report with the following points affecting public services which fall within our reference, *viz.* :—

- (1) The functions which should be discharged by provincial Governments in relation to the public services,
- (2) The control that should be retained by the Government of India, and
- (3) The powers which should be exercised by the Governor in Council in regard to members of the public services employed in transferred departments.

69. We have received from the Government of India a Memorandum on "The Public Services under Reforms," which has been of great assistance to us in considering this question. This Memorandum, which forms an annexure to our Report (Annexure IV), has afforded the basis for our consideration of the subject, and we think that our views can most conveniently be stated in the form of a commentary on this Memorandum, with which we are in general agreement in so far as the proposals which it contains relate to

matters falling within our reference. The points on which we suggest some modification of these proposals will be dealt with in relation to the paragraphs of the Memorandum in which they appear.

70. For the purpose of dealing with the subject we accept the classification set out in paragraph 3, viz., Indian (which we shall call All-India services), provincial and subordinate. (Classification. Para. 3).

No service should be included as an All-India service without the sanction of the Secretary of State, while the demarcation between the provincial and subordinate services should be left to the provincial Governments.

The professional division is, it is assumed, intended to include professional officers recruited on special contracts who do not fall within any of the other three classes. (Para. 5.)

We consider that any variation in the provincial cadre of an All-India service, whether by way of increase or decrease, should require the sanction of the Secretary of State. The proviso that every new permanent post created in the provinces must be added to the cadre of the service to which its duties most closely correspond does not appear to us to be workable, and for practical purposes the object sought can be attained by requiring previous sanction to the creation of new provincial appointments on a pay of Rs. 1,000 or over, as proposed by the Government of India in paragraph 24. (Pay. Paras. 9 and 10.)

The temporary additions to the cadre of All-India services should be on salary and allowances not exceeding those permissible for appointments of a similar nature or status within the regular cadre. (Para. 11.)

We think that it will tend to avoid conflict with the audit authority if the allowances other than acting or exchange compensation allowances are governed by rules made by the local Governments subject to the control of the Government of India. Regulations regarding house rents should be dealt with in the same way. (Allowances. Paras. 12-13.)

It is assumed that the rules regulating foreign service in Native States will be made by the Government of India. (Foreign Service. Para. 15).

## REPORT OF THE FUNCTIONS COMMITTEE.

We agree that the Governor in Council should not be brought in as a formal agency of arbitration in the grievances of public servants and recommend that the following procedure should be adopted. The statutory rules should provide that no orders affecting adversely emoluments or pensions, no orders of formal censure and no orders on memorials shall be passed with regard to officers of All-India services in transferred departments without the personal concurrence of the Governor. If, as we propose, the Medical Department is transferred, the statutory rules should provide that the private practice of the Indian Medical Service shall be regulated only by the Secretary of State, and that the Governor's personal concurrence shall be obtained to any order of transfer of an Indian Medical Service officer, because, owing to variations in the value of private practice in different appointments, an order of transfer may seriously affect emoluments. The Instrument of Instructions to the Governor should, in addition to the general provision proposed by the Government of India, provide that, before any order belonging to any of the classes described in the preceding part of this paragraph is passed to the disadvantage of any officer of an All-India service, whether serving in a transferred or reserved department, the Governor shall submit the matter for joint deliberation by both sections of the Government.\* Appeals should lie to the Government of India and the Secretary of State against all such orders, except those relating to transfers of Indian Medical Service officers. No officer of an All-India service should be dismissed except by order of the Secretary of State. (Administration and Discipline. Paras 17-19.)

When an officer's pay is debited to more than one head and one of these heads is transferred the question of his control for the purpose of posting, promotion and discipline should be dealt with in accordance with the general rules

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\*Mr. Couchman and Mr. Thompson are unable to support this recommendation so far as it affects officers serving in reserved departments, except where a transferred interest is concerned. They consider that the Committee should not enter into the question of the right of Ministers to influence the administration of reserved subjects, and they regard the recommendation in so far as it affects the officers referred to, where transferred interests are not concerned, as uncalled for.

regulating cases where both reserved and transferred departments are affected. (Para. 21.)

Pending legislation, the existing rules regarding conditions of service should *mutatis mutandis* be binding on the Ministers as regards transferred departments. (PROVINCIAL SERVICES. Para. 22.)

Where alterations of rules for recruitment affect a transferred department the matter should be dealt with in accordance with the general rules regulating decisions in cases where both reserved and transferred departments are affected. (Recruitment. Para. 23.)

We consider that in the case of existing members of provincial services the procedure suggested in the case of members of All-India services should apply, with the proviso that there should be no appeal to the Secretary of State where the present rules do not allow such an appeal. In the case of future entrants to the services there need be no provision for joint deliberation before the passing of orders of the kind described, but all such orders, and an order of dismissal, should require the personal concurrence of the Governor, and an appeal should lie only to the Government of India. (Administration and discipline. Para. 30.)

It is suggested that as far as possible the members of All-India services should be secured in the benefits of the conditions under which they were recruited. It is recognised that the Secretary of State reserves the right to alter those conditions, but in practice the principle is accepted that such alterations shall not press harshly on the members of the services and we consider that this principle should be formally recognised in the future. (Summary. Para. 36 (1).)

We are of opinion that it would not be within the terms of our reference to consider the proposal that in certain circumstances officers of the public services should be granted permission to retire on proportionate pensions. (Paras. 18 and 30.)

As the proposal for a Public Service Commission is only in its initial stage we do not feel able to express an opinion upon it. (Para. 34.)

71. There are two further questions to which we wish to refer here. There are certain medical appointments which

are in the gift of the Government of India, we do not intend that our proposals should be taken as altering this arrangement, any modification of which should rest with the Government of India. Similarly, though the post of Director of Public Instruction is not included in the provincial cadres of the Indian Education Service, the position is made clear by the following quotation from the Government of India Resolution No. 679 of the 12th September 1906: "The latter Resolution (of 4th September 1886), while not giving members of the Education Service an absolute claim to succeed to the post of Director, contemplated that, before appointing a person not belonging to the service, local Governments should, in the event of their considering it desirable to fill the post otherwise than from the local educational staff, seek the assistance of the Government of India, with a view to procuring a suitable selection from the Educational Department of some other province." This position we do not desire to disturb.

### Section V—Finance.

72. In regard to the subject of Finance we found it necessary to limit the scope of our inquiries. We have assumed that the finances of the Government of India and of provincial Governments will be separated on the lines proposed in paragraphs 200 to 208 of the Report, and have taken the view that it was not within our scope to consider any modification of these proposals. Again, the control of the Government of India over provincial Governments is at present exercised largely through the rules in the financial codes, but the relaxation of these restrictions will, we understand, be separately considered (*vide* paragraph 292 of the Report), and we have not attempted to deal with the subject. Apart from these important questions, however, we felt that it was part of our duty under the terms of our reference to define as far as possible in the sphere of finance the control to be retained by the Government of India, and to indicate how the functions of the provincial Government as regards finance should in our opinion be apportioned between the Governor in Council and the Governor and Ministers. In doing so we have carefully considered a Memorandum on Finance (*vide* Annexure V), with which we were furnished by the Government of India, containing their views on certain changes which will be re-

quired in the financial organization, particularly of provincial Governments, under the Reforms scheme. The portions of the Memorandum which we have specially considered fall under the following heads —

- (1) Accounts and Audit (Paragraphs 14, 28 and 29) ;
  - (2) The position of the Finance Department in the provincial Government (Paragraphs 24 to 27) ,
  - (3) Taxation for provincial purposes (Paragraph 20) ;
  - (4) Borrowing on the sole credit of provincial revenues (Paragraph 21) ;
  - (5) Control over the provincial balances (Paragraph 22).
- As will appear from what is said in the following paragraphs we are in general agreement with the proposals contained in the Memorandum under these heads. We may add that we have found it convenient to include in this Section our recommendations regarding the control of the Government of India over taxation and borrowing by local bodies.

#### ACCOUNTS AND AUDIT.

73. The proposals in the Memorandum regarding accounts and audit affect both what may be called "Parliamentary" control over expenditure and the relations of the Government of India with the provincial Governments. In this matter we can only express our concurrence with what is stated in the Memorandum. The procedure proposed in paragraph 29 will enable the Legislative Council to exercise an effective control over expenditure and for the present the existing system of accounts and audit will continue. Under that system—

- (1) The provincial accounts will be compiled and audited by a staff appointed, paid for and controlled by the Government of India :
- (2) The main framework of the provincial accounts will be settled by the Government of India and the Secretary of State, though the details will, in large measure, be left to the provincial Governments ;
- (3) The Treasury Officer, though appointed and paid by the provincial Government, will, in matters of accounts procedure, the remittance of treasure and



the transfer of funds to and from the currency balance, be bound by the general rules and instructions of the Government of India and by orders issued to him by Accounts Officers.

We note, however, that the Government of India contemplate that with complete provincial autonomy the provincial accounts will be compiled and audited by an entirely separate staff, paid for by the province and for audit purposes subordinate to a provincial Auditor-General.

### POSITION OF THE FINANCE DEPARTMENT IN THE PROVINCIAL GOVERNMENT.

74. In accordance with the proposals contained in paragraphs 24 to 27 of the Memorandum the Finance Department will be a reserved department and will not be transferred to the control of a Minister (as regards new taxation and borrowing see paragraphs 75-80 below). In relation to transferred departments, however, the functions of the Finance Department will be to advise and criticise, and the final decision will rest with the Minister, subject to the assent of the Governor, which would only be refused "when the consequences of acquiescence would clearly be serious" (paragraph 219 of the Joint Report). We agree that this is the best arrangement. The only comments that appear necessary are the following :—

- (a) Paragraph 27 (2).—We consider that the report of the Finance Department on the scrutiny proposed in this paragraph should be placed before the Governor in Council or Governor and Minister, as the case may be, but should not be laid before the legislature unless the Governor so directs.
- (b) Paragraph 27 (2).—We consider that the statement that it will be part of the duty of the Finance Department to discuss the necessity of the expenditure and the general propriety of the proposals put forward calls for the following comment. It is understood that general propriety means in this context general propriety from the financial point of view. There must obviously be limits to criticism by the Finance Department in matters of policy, but

these limits must be left to be settled by convention.

- (c) Paragraph 27 (3).—We consider that the Government of India rule quoted in paragraph 11 of the Memorandum should be adopted in all provinces, *mutatis mutandis*.
- (d) Paragraph 27 (6) (b) and (c).—We understand that by the “authority which passed the budget” is meant the Legislative Council. We assume that the Governor by exercise of his special authority under Section 50 of the Government of India Act will still be able in exceptional cases to override the Finance Department in matters falling under (b) and (c), and we think the position on this point should be made clear.

#### TAXATION FOR PROVINCIAL PURPOSES.

75. In paragraph 20 of the Memorandum a list is contained of the additional taxes which provincial Governments might be allowed to impose without the previous sanction of the Government of India. According to the proposals these taxes are to be included in a schedule, which would be established by rule and not by statute, and might therefore be corrected or enlarged in the light of experience. The schedule proposed by the Government of India is as follows —

Any supplement to revenues which are already provincial, *e. g.*, cesses on the land, enhanced duties on articles that are now excisable, higher court-fees, increased charges for registration etc.

Succession duties.

Duties upon the unearned increment on land.

Taxes on advertisements, amusements (including totalisators) and specified luxuries.

In one point only the schedule appears to us to require modification. It is not clear exactly what forms of land taxation would be covered by the entry “Duties upon the unearned increment on land,” and it seems to us desirable that the entry should be so framed as to make the provincial powers of land taxation as wide as possible. We may point out, however,

that some forms of land taxation, *e. g.*, a tax on successions or transfers, might be most conveniently collected by means of a stamp duty, and in that case the tax would affect a source of revenue reserved to the Government of India. It ought, we think, to be made clear whether, in such cases, the inclusion of a land tax in the schedule is to exempt provincial Governments from obtaining the previous sanction of the Governor-General under section 79 (3)(a) of the Government of India Act.

76. In paragraph 257 of the Report it is proposed that, if the residue of the provincial revenues (after the contribution to the Government of India and the allotment for reserved services have been set aside) is not sufficient, it should be open to Ministers to suggest fresh taxation. This feature of the scheme appears to us to fix on the Ministers the responsibility of devising means whereby any deficiency in the public revenues may be made good. It must, therefore, be open to Ministers to initiate within the Government such proposals as may seem suitable for this purpose, and it will be the Ministers who will be responsible for placing taxation proposals before the legislature. It seems to us to follow that, when any new tax or any proposed addition to an existing tax requires legislation to give effect to it, the decision whether that legislation should be undertaken must rest with the Governor and Ministers. Further, inasmuch as the whole balance of the revenues of the province (after deducting the contribution to the Government of India, the sums required for the service of the provincial debt and the sums allotted to the reserved services) will be at the disposal of the Ministers for the administration of the transferred departments, we think that, when an existing tax cannot be reduced or remitted without legislation, the decision whether such legislation should be undertaken must also rest with the Governor and Ministers. To the extent indicated above, therefore, taxation for provincial purposes should be regarded as a transferred subject.

It would not necessarily follow, however, that the collection of a new or additional tax would rest with the Ministers. That would ordinarily depend on the agency to be employed in assessing or collecting the tax, a matter which would presumably be settled by the legislation authorising its imposition. The assessment or collection of the tax would,

therefore, be reserved or transferred, according as the agency employed belonged to a reserved or to a transferred department.

77. We have considered how far the transfer of provincial taxation discussed above would be affected by the plan proposed for dealing with mixed questions (*vide* paragraph 60). When a taxation Bill is proposed by Ministers, it may appear that some interest, the care of which is entrusted to the Governor in Council, is likely to be prejudiced. In such cases if the Executive Council adhered to its objections it would be for the Governor finally to decide in accordance with the usual procedure. But when a reserved department is affected only because it is proposed to assess or collect the tax through its agency, we think that in that case the Executive Council should be entitled to press their objections only as to the use of the agency, and that the merits or demerits of the tax should be left entirely to the decision of the Governor and Ministers. This would not exclude joint deliberation, and indeed we take it for granted that in practice joint deliberation would invariably precede the introduction of a taxation Bill.

78. We consider that it should be the duty of the Finance Department to prepare a report on every taxation Bill proposed to be introduced into the Legislative Council, and that this report should be placed before the Governor and Ministers, but should not be laid before the legislature unless the Governor so directs. The report of the Finance Department should, we think, be confined to the financial aspects of the proposed tax and should not deal with questions of policy.

79. In some departments under the existing law the assessment of revenue or the fixing of the rates of duty is left to executive action, and the question how in these cases variations in the rates of taxation are to be dealt with must be separately considered. Land revenue, for example, is assessed according to certain established principles, and the amount of the assessment does not depend on the financial exigencies of the moment. In the Excise Department, again, the declared policy of Government has been to raise the maximum revenue from the minimum consumption, and, when a higher duty can be imposed without unduly stimulat-

ing illicit practices, it may be proper to raise the duty even though no increased revenue is required. In cases such as these it is through the assessment of revenue and the fixing of the rates of duty that the policy under which the department is administered finds its concrete expression, and it is only those responsible for determining policy who can properly decide. We are of opinion, therefore, that, when alterations in taxation can be effected without any change in the law, the decision whether any alteration should in fact be made must be recognized as resting with the Governor in Council if the department is reserved, and with the Governor and Ministers if it is transferred. It is no doubt true that decisions such as these, as well as the general administration of a law authorizing taxation, must affect the joint financial resources of the Government, but it cannot be admitted that merely on that account both reserved and transferred departments are affected in the sense that a Minister or a Member of Council would be entitled to press his views upon the department directly concerned, and, if his view were not accepted, to ask the Governor to deal with the matter in accordance with the plan proposed for 'mixed cases' (*v.* paragraph 60).

#### BORROWING ON THE SOLE CREDIT OF PROVINCIAL REVENUES.

80. The effect of the proposals in the Memorandum appears to be as follows. The provincial Governments must ordinarily borrow through the Government of India ; but, subject to the approval of the Government of India as to the method of borrowing, including the rate of interest and the time of borrowing, provincial Governments would be at liberty to borrow in the Indian market in the following cases, *viz.* :—

- (1) if the Government of India found themselves unable to raise in any one year the funds which the province required ; or
- (2) if the province could satisfy the Government of India that there was good reason to believe that a provincial project would attract money which would not be elicited by a Government of India loan.

## THE INDIAN CONSTITUTION.

The funds raised by provincial borrowing should be devoted only to—

- (1) expenditure on famine relief and its consequences ;
- (2) financing of the provincial loan account ; and
- (3) capital purposes, *i.e.*, expenditure which produces permanent assets of a material character.

When a province borrowed for non-productive purposes it would be required to establish a sinking fund on a basis to be approved by the Government of India.

To these proposals, with which we agree, we have only one addition to make. We are of opinion that borrowing is a matter in which both sides of the Government must be considered to be interested, since the security of the loan will be the whole revenues and assets of the provincial Government. We consider, therefore, that, if after joint deliberation there is a difference of opinion between the Executive Council and the Ministers, the final decision whether a loan should be raised and as to the amount of the loan must rest with the Governor.

### CONTROL OVER PROVINCIAL BALANCES.

81. In paragraph 22 of the Memorandum certain proposals are made regarding the control of the Government of India over provincial balances. It is suggested that the allowance made for famine expenditure in the new provincial settlements should be earmarked in the provincial balances or invested, unless it is spent on purposes which, in the local Government's recorded opinion, would have a direct and calculable effect in palliating the consequences of drought. Each local Government would also be required to give timely intimation in each year of its intentions as regards drawing on its credit with the Government of India, and would, in the absence of famine or other grave emergency, be obliged to adhere to its programme. On the other hand the existing rules which require a local Government to maintain a certain minimum balance and not to budget for a deficit without higher sanction would be abrogated. These recommendations have our entire concurrence.

CONTROL OF THE GOVERNMENT OF INDIA OVER LOCAL  
AND MUNICIPAL FINANCE.

82. We have considered how far the Government of India should reserve control over taxation by municipalities and other local bodies. If the matter were left entirely to provincial legislation it might easily happen that local taxes would affect the sources of revenue reserved to the Government of India. Thus for example in several provinces municipalities may impose a tax on persons following professions, trades and callings including those who hold appointments remunerated by salaries or fees. Such a tax is clearly of the nature of an income-tax, and the Government of India should have full power to protect their own revenues. Again, under the Calcutta Improvement Act three special taxes are imposed, the revenues from which are received by the Improvement Trust, *vis.* :—

- (1) A terminal tax on passengers arriving at or departing from Calcutta,
- (2) An export tax on jute, and
- (3) A duty on all transfers of real property within the municipality of Calcutta.

The first of these taxes, in so far as it takes the form of a surtax on railway tickets, and both the other two, are obviously within the sphere of taxation reserved to the central Government, and in the case of such taxation the previous sanction of the Government of India ought to be required. We are of opinion that a schedule of municipal and local taxation should be prescribed by the Governor-General in Council. The schedule might include all taxes admissible under the existing law of the various provinces, so long as they do not trench on the sphere of the central Government, and should also include all taxes contained in the provincial schedule (*vide* paragraph 75). The previous sanction of the Government of India would then be required to the imposition of any tax not covered by the schedule, or to provincial legislation which empowered local bodies to impose such a tax.

83. We have also considered how far borrowing by local

bodies should be subject to the control of the Government of India. Where a local body borrows, as is commonly the case, through the provincial loan account, no special control appears necessary, since either the funds will be provided from provincial balances or the local demand will be incorporated in the provincial loan for the year. Where a local body desires to borrow in the Indian market the Government of India are entitled to exercise control to the same extent and for the same reasons as they control provincial borrowing, though this control may well be relaxed when the loan proposed to be taken is not large in amount. Where the control of the Government of India is reserved by any existing law, the relaxation of that control by legislation would require the previous sanction of the Governor-General.

#### PROPOSALS OF SIR JAMES MESTON.

84. We have received from the Government of India two additional memoranda containing important proposals by Sir James Meston as to a plan of dealing with provincial finance different from that set forth in paragraph 257 of the Joint Report. These proposals involve a substantial departure from the scheme outlined in the Report, and necessarily affect some of the points discussed in the foregoing paragraphs. In view of the late stage at which these proposals reached us we are not in a position to express any opinion upon them.

#### Section VI.—Conclusion.

85. We desire to record our special obligations to the many officers of Government who have assisted us by their expert knowledge, and by rendering available in convenient form the detailed information which it was necessary to obtain for the purpose of enabling us to conduct our enquiry.

The work falling upon the Secretary to the Committee has been unusually exacting. We wish to express our thanks



REPORT OF THE FUNCTIONS COMMITTEE.

to Mr. J. D. V. Hodge, I.C.S., for the great care and ability which he has devoted to his work in this capacity.

We have the honour to be,  
Your Excellency's most obedient servants,  
RICHARD FEETHAM,  
*Chairman.*

M. E. COUCHMAN.  
RAHIM BAKHSH.  
TEJ BAHADUR SAPRU.  
C. H. SETALVAD.  
H. L. STEPHENSON.  
J. P. THOMPSON. } *Members.*

J. D. V. HODGE.

*Secretary.*

*Delhi, the 26th February 1919.*

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ANNEXURE II.

MEMORANDUM FOR THE SUBJECTS  
COMMITTEE.

This memorandum is an attempt to state the views of the Government of India upon the general principles involved in the questions which the Subjects Committee will have to consider. On the basis of these views the Government of India are now dealing separately with cases of the different departments, supplementary memoranda upon which will be transmitted to the Committee. The Government of India hope to discuss further with the Committee the views now put forward after the opinions of the provinces have been received. In this connection the Government of India would find it of great assistance to them if they could receive from the Committee statements showing the substance of the material on which the Committee propose to base their own conclusions.

2. The first basic fact with which the Government of India start is that both the Government of India and the provincial Governments in India are subordinate governments, and the Indian and provincial legislatures are subordinate

legislatures. The Imperial\* Government and Parliament are alone supreme. A practice of non-intervention may gradually grow up, as it did in the case of the Dominions, but this is not the position at present and the governments and legislatures in India do not possess uncontrolled power in any respect whatsoever.

3. The second basic fact is that legislative and executive authority must go hand in hand. If a Government, central or provincial, has power to legislate on any matter, it must have a corresponding power to carry out its laws. Wherever there is an overriding power of legislation, there must be a corresponding overriding executive power, with unquestioned capacity to make the overriding legislation effective

4. The third basic fact is that the Government of India are responsible to the Imperial Government and Parliament for the administration of India. They cannot be divested of that responsibility except by the consent of the Imperial Government and Parliament, and so long as that responsibility attaches to them, they must have the power to enforce it, and such power must be both legislative and executive

5. Assuming these axioms, the problem before us is to divide the whole field of Indian administration into two classes, central and provincial, in such a way that the Government of India will be directly responsible for the administration of the first, while in regard to the second they will retain only a general responsibility to be exercised under conditions to be discussed later on.

6. The Government of India cannot at present deal with the further question whether any provincial subject is to be administered by the Governor in Council or by Ministers. That is a matter to be considered in the provinces first and by the Government of India only when they have received the views of the provinces. Conditions will vary between provinces, and for this reason alone apart from other considerations it is not practical for the Government of India at this stage to deal with the division of provincial subjects into the categories of reserved and transferred. Their immediate object is merely to arrive at the principles which should

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\* NOTE.—The Government of India suggest that the term Imperial should be reserved in this discussion for His Majesty's Government and Parliament.

## REPORT OF THE FUNCTIONS COMMITTEE.

regulate the classification of functions into central and provincial.

7. There are certain subjects which are at present under the direct administration of the Government of India. The Government of India maintain separate staffs for their administration, and the provincial Governments have no share in it. The category is easily recognisable, and for the most part there will not be much room for doubt as to the subjects to be included in it. At the other end of the line are matters of predominantly local interest which, however much conditions may vary between provinces, will generally speaking be recognised as proper subjects for provincialization.

8. Between these extreme categories, however, lies a large indeterminate field which requires further examination before the principles determining its classification can be settled. It comprises all the matters in which the Government of India at present retain ultimate control, legislative and administrative, but in practice share the actual administration in varying degrees with the provincial Governments. In many cases the extent of delegation practised is already very wide. The criterion which the Government of India apply to these is whether in any given case the provincial Governments are to be strictly the agents of the Government of India, or are to have (subject to what is said below as to the reservation of powers of intervention) acknowledged authority of their own. In applying this criterion the main determining factor will be not the degree of delegation already practised, which may depend on mere convenience, but the consideration whether the interests of India as a whole (or at all events interests larger than those of one province) or on the other hand the interests of the province essentially preponderate. The point is that delegation to an agent may be already extensive, but that circumstance should not obscure the fact of agency or lead to the agent being regarded as having inherent powers of his own.

9. Applying this principle, the Government of India hold that where extra-provincial interests predominate the subject should be treated as central. This category as already noted also includes matters which the central Government administer directly by means of their own staff. But confining themselves in this paragraph to cases in which central subjects

are partly administered by provincial Governments acting as agents for the central Government, the Government of India wish to emphasize two points. They propose to examine existing conditions with a view to relaxing as far as possible the central control over the agency and to getting rid of any unnecessary limitations on the agent's discretion. They distinguish this process as one of decentralization, not to be confused with the larger purpose of devolution. At the same time the Government of India think it should be recognized that it is within the principal's power to restrict the agency or even to withdraw it altogether, substituting for it direct administration by the central Government; and that if and when it is proposed to transfer the functions of the provincial agency to the hands of Ministers this particular question will need careful reconsideration.

10. On the other hand, all subjects in which the interests of the provinces essentially predominate should be provincial, and in respect of these the provincial Governments will have acknowledged authority of their own. At the same time, as is recognised in the Report, the Government of India's responsibilities to Parliament necessitate the retention of some powers of intervention in provincial subjects. The Government of India propose to state their views upon the question of the grounds on which and methods by which such powers should be secured and exercised, in the hope that they may be of assistance to the Committee.

11. Among provincial subjects some will be transferred. Taking the case of these first the Government of India think that the exercise of the central Government's power to intervene in provincial subjects should be specifically restricted to the following purposes.

- (i) to safeguard the administration of Government of India subjects;
- (ii) to secure uniformity of legislation where such legislation is considered desirable in the interests of India or of more than one province;
- (iii) to safeguard the public services to an extent which will be further determined subsequently,
- (iv) to decide questions which affect more than one province.

## REPORT OF THE FUNCTIONS COMMITTEE.

So far as legislation is concerned the Government of India think that the exercise of the legislative powers of the central Government should be by convention restricted in the manner proposed in paragraph 212, to the above-named grounds.

So far as administration is concerned, section 45 should be so amended as to empower the Secretary of State to make rules restricting the exercise of the central Government's powers of administrative control over provincial Governments in transferred subjects to the same specified grounds. This proposal is subject to the following qualification. In the past a very important element in the administrative control exercised by the central Government has been the element of financial control. The Government of India have not yet concluded their examination of the character and extent of the control to which public expenditure in the provinces should under the new arrangements be subjected, and with this aspect of the question they will deal separately. Their proposals in this paragraph should be regarded as relating to control which is not based on financial considerations.

12. A word may be added as to the methods by which the central Government should intervene when necessary in the case of transferred subjects. A suggestion which seems well worth consideration has been made that in such cases control by the central Government may be better exercised by the Governor acting under the central Government's orders, and enforced in the last resort by resumption of the transferred subject, than by the direct interference of the central Government in the form of orders addressed to the provincial Government, as would be the appropriate course in the case of reserved subjects.

13. Coming now to the more difficult question of the grounds justifying intervention in the case of reserved subjects, which is referred to in paragraphs 213 and 292 of the Report, the Government of India accept the proposition that the justification for relaxing control which exists in respect of transferred subjects is in the case of reserved subjects lacking. They take note also of the possibility that public opinion may be critical of any general relaxation of their authority over official subordinates. At the same time they consider that the new situation requires greater relaxation of control than is suggested by the expression "getting rid of interference in

minor matters which might very well be left to the decision of the authority which is most closely acquainted with the facts" (paragraph 213).

In coming to this conclusion they take into account first the changed character of the provincial Governments and the more representative character of provincial Councils. They also note that, so far as financial considerations have entered into the control practised in the past, when the provinces have separate revenues the main motive for interference will disappear, and in so far as the expenditure codes are curtailed or abolished (upon which question as already indicated they have not yet been in a position to formulate their proposals) the ordinary everyday means of exercising control will also vanish. Above all they take account of the new situation in respect of legislation. They accept the proposal made in paragraph 212 of the Report that in all provincial subjects the Government of India will by convention not legislate except on specified grounds which may be taken as those already set out in paragraph 11 above. They also take it that on all subjects, whether provincial or not, provincial legislatures will retain their existing power of legislation subject only to such statutory restraints as it may be decided to retain or to impose. This will involve an amendment of section 79 of the Government of India Act, 1915, which will in future require the previous sanction of the Governor-General to legislation by a provincial Council which is not purely on a provincial subject. There will henceforth be no control over provincial legislation exercised by the Government of India in the form of purely executive orders.

For all these reasons the Government of India look forward in future to very different relations between the central and provincial Governments, even in reserved subjects, from those which have obtained in the past.

14. Nevertheless, as they have already said, the Government of India accept the principle laid down in paragraph 213 that an official Government which is not subject to popular control cannot properly be legally exempted from superior official control. Bearing in mind the further fundamental principle that saving its responsibility to Parliament the central Government must retain indisputable authority in essential matters, and also the practical danger that the speci-

fication of certain grounds for the exercise of powers of control may be taken to imply the exclusion of others, they hold that it would be unwise to lay down any specific limitations upon their legal powers of interference with provincial Governments in reserved subjects. In respect of these therefore they propose no amendment of section 45 of the Government of India Act.

At the same time the Committee may find it useful to have some indication of the extent to which the Government of India consider that such control will generally be exercised in future, and for this purpose the Government of India take first the four grounds already mentioned in paragraph 11 in the case of transferred subjects. In addition they think that intervention would be required in cases where it was necessary to enforce any standing or special orders of His Majesty's Government conveyed by the Secretary of State, or in exceptional cases, where the Government of India considered that the interests of good government were seriously endangered. But in suggesting these grounds by way of explanation the Government of India wish to make it clear that they do not intend that their specification of certain matters should be made the basis of any formal limitation of their legal powers.

15 In cases where the Governor in Council exercises his powers of intervention in relation to transferred subjects under section 240 of the Report the Government of India think that the central Government should have the same powers of control as if the Governor in Council's decision had been taken in a reserved subject.

16. A minor point worth mention is that the Government of India contemplate that the central Government should have an unquestioned power, to call for any information, statistical or otherwise, and in any form they desire, from provincial Governments, whether such information relates to a transferred or to a reserved subject, and that section 45 of the Act should, if necessary, be amended so as to place their powers in this respect beyond question. It may be covered by their proposals in paragraph 11 (*i*) above read with paragraph 291 of the Report.

ANEXTURE III.

SUPPLEMENTARY MEMORANDUM FOR THE  
SUBJECTS COMMITTEE.

The Government of India have taken into further consideration the questions which arise in connexion with the proposed demarcation of the field of provincial administration, and have recorded the following conclusions :—

(1) They recognize that those subjects or departments which are to be transferred to Ministers come within the field of provincial administration. In respect of these the Government of India have stated their intentions in paragraph 11 of their memorandum of November 29, 1918.

(2) At the other end of the scale they recognize that there are certain subjects which cannot go into the field of provincial administration, but must be administered centrally.

(3) As regards the treatment of subjects lying in between these categories the Government of India think that—

(i) the subjects which appear in the provincial budget should be described as the subjects which a province administers,

(ii) there should in respect of these be no statutory restriction of the Government of India's power of superintendence, direction and control,

(iii) in respect of these same subjects the Government of India will undertake a formal and systematic scheme of devolution of their authority, such scheme to be compatible with the exercise of their control in matters which they regard as essential to good government,

(iv) the Government of India do not contemplate that the administration of such subjects should become amenable to the control of the legislature, otherwise than by their formal transfer at the date of the periodic commission; and they recognize that in the exercise of their control over such subjects the Government of India should have due regard to the purposes of the new Govern-



ment of India Act, as they anticipate that these will be declared in the preamble.

*February 19, 1919.*

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## ANNEXURE IV.

### THE PUBLIC SERVICES UNDER REFORMS.

The Report deals in various places with the position of the public services (paragraphs 128, 156, 240, 259, 318—327), but two passages are of outstanding importance. On the one hand it is laid down (paragraph 259) that there is to be no duplication of the services:—"To require Ministers to inaugurate new services for their own departments would be to saddle them with difficulties that would doom the experiment to failure". On the other hand, it is declared (paragraph 325) that "any public servant, whatever the Government under which he is employed, shall be properly supported and protected in the legitimate exercise of his functions", and the Government of India and the Governor in Council are to have unimpaired power to "secure these essential requirements". The Government of India accept these propositions. They take it that the machinery of the public service, as it exists to-day, is to be used by Ministers, and the service is to be given adequate protection in its new situation. Means must be found of fulfilling these requirements.

2. Hitherto the regulation of the public services has been to a great extent uncoded, or coded only by executive orders. The position will be altered now, with the public services coming, in an increasing measure, under popular control. It will be only fair both to ministers and to public servants that they should be supported by a clear regulation of their formal relations to each other. And it is eminently desirable that they should find this regulation established from the outset of the new conditions. Moreover, there ought not to be one law for public servants working under Ministers, and another for those who remain under the official part of the Government. So far as may be, the public employé

should find himself under a similar régime in whatever branch of the administration he may serve. So also the claims of Ministers upon the public service and their duties towards it should be closely comparable with those of the official members of the Government. The whole machinery ought to be arranged so that the transfer of a department from one part of the Government to the other should cause the least possible dislocation, or change in the conditions of their service, among the permanent officials employed in the department. The most hopeful way of arriving at the basis of the necessary law and rules seems to be to consider in relation to each class of service how the operations which are necessarily involved in running a service ought in future to be performed when the new constitution is in operation.

#### CLASSIFICATION.

3. The Government of India think that all public servants working in the provincial field of administration should be classified in three divisions, Indian, provincial and subordinate. Such a step has invariably been found necessary in the Dominions ; it seems necessary in India for the purpose of distributing authority in future ; and it has the advantage of enabling greater simplicity to be introduced into the rules or regulations.

4. The chief criterion will be the appointing authority. Broadly speaking, the Indian division would include services for which the Secretary of State recruits the whole or a considerable part of the members—the services, in fact, in which it is desired to retain a definite proportion of Europeans or Indians educated in Europe. The provincial division would embrace posts with duties of a responsible character, and not of a merely clerical type, for which the local Government ordinarily recruits. Posts for which the Government of India at present recruit could be treated as Indian or provincial, according to the nature of their duties. All subordinate and clerical posts would come into the third division. It will probably be found that the classification will entail considerable changes in existing nomenclature. Again, a number of grades do not now receive provincial status, although their officers are recruited on uniform qualifications for the whole province and may be liable for service in any part of the pro-

vince. From this point of view, such classes as the naib-tahsildar, the sub-assistant surgeon, and the like, may be conveniently placed *ad hoc* in the provincial division. Similarly, all miscellaneous posts, not being of a purely subordinate character, which are not at present in either the Indian or provincial category, would be treated as belonging to one or the other if they are of similar status, or recruited for in a similar way, to those branches respectively. The third division would take in all appointments of lower than provincial status. They would usually be the posts which are filled departmentally, or by district officials, without reference to a central authority.

5. It is probable, however, that in all provinces there would be certain posts of importance which would not conveniently fall into either the Indian or the provincial category. Some of the technical educational posts are a case in point. For these it may be necessary following the usual Dominion practice to create a separate professional division.

6. The proposed classification should at present be undertaken only, to use the phrase of the report (paragraph 238), in the "field of provincial administration". The division into Indian and provincial classes might not be easy in services like the railways, post office or customs ; and it is not necessary for present purposes, though power may suitably be taken to make it when the necessity arises.

7. The dominant considerations are that Ministers coming now to office should be provided with an efficient staff and not have to rely on what they can get ; and that it is of the utmost importance to India to have in the highest services, which are to set a model to the rest, an Indian as well as a European element on which the seal of the existing system has been definitely impressed. The Government of India think that—

(1) recruitment whether in England or India for the India services should be according to the methods laid down in statutory orders by the Secretary of State ;

(2) all persons recruited to the India services whether in England or in India (whether by examination, promotion or direct appointment) should be appointed by the Secretary of State

*Pay.*

8. (a) *Rates of pay.*—After weighing the opposing considerations, the Government of India think that, if the India services are to be kept together on more or less one plan and the Secretary of State is to feel his responsibility for them, it is practically necessary that he should fix their rates of pay.

9. (b) *New appointments.*—The Government of India think that the addition of any new post to the India services should require the sanction of the Secretary of State.

10. It is, however, necessary to prevent the intention of the last proposal from being defeated by the device of creating appointments similar in purpose to those ordinarily filled by the India services, but keeping them technically outside the cadre. For this purpose a proviso on the following lines seems needed :—

Every new permanent post created in the provinces must be added to the cadre of the service to which its duties most closely correspond.

11. (c) *Temporary appointments.*—The Government of India consider that local Governments should have power to sanction, without any limit of pay, any temporary additions to the cadre of India services, either up to a limit of two years' duration, or else without any such limit, on the understanding that the audit will check any evasions of the rule about permanent posts.

*Allowances.*

12. These are known by several titles, but can probably all be brought within a few generic names—acting, exchange compensation, duty, local, travelling and personal and honoraria. Acting allowances are included in salary and are part of the emoluments attaching to a particular office. The introduction of a time scale will to a great extent do away with them: but where they are still required the Government of India think that the Secretary of State should lay down the rules under which they may be granted. The Government of India hope that these may be simplified and that it will not be necessary to keep all the existing

bases of calculation. The same authority should lay down the basis on which exchange compensation may be granted and details would be settled by local Governments.

13. All other allowances, however, are clearly distinct from pay, and ought to be given for reasons which can only be fully known to the local Governments, and the Government of India propose that, subject to very general directions by the Secretary of State, the grant should be left to them. Thus the Secretary of State would lay it down that travelling allowance was not to be a source of profit : that local allowances in all their forms should bear some reasonable relation to the extra expenses of the locality, and that duty allowances, deputation allowances and personal allowances should bear some reasonable relation to the officer's pay.

#### *Leave.*

14. Leave is one of the great amenities of the services, and ought to be maintained on generally uniform lines : but it has long been recognized that the leave code is needlessly rigid and restrictive and that greater latitude is desirable. The Government of India think that the Secretary of State should determine (a) the total amount of leave of every kind admissible, (b) the scale of allowances admissible for each, (c) the maximum to be taken at any one time, (d) the minimum interval between two periods, (e) the terms of commutation of one kind for another, and that within these limits all leave questions should be determined by local Governments.

#### *Foreign Service.*

15. The only matters in which it seems necessary for the Secretary of State to frame fundamental regulations are in regard to contributions to leave and pension by an officer on foreign service, and the calculation for purposes of subsequent leave of his foreign service pay. All other matters should be left to local Governments.

#### *Pensions and Superannuation.*

16. The Government of India think that the age of superannuation and the scale of pensions for the India services

should be fixed by statutory orders of the Secretary of State made under the new Government of India Bill.

*Administration and Discipline*

17. These appear to be all the matters connected with India services for which it is possible to make provision by rule. In all these cases where the local Government has been spoken of, the authority will be that of the Governor in Council in the case of reserved departments, and that of the Governor acting with Ministers in the case of the transferred services. But there remain to be still considered the day to day matters of administration which raise the question of the Governor's responsibility in all service questions.

While they plainly realize the difficulties involved the Government of India think that to give any formal option of serving or declining to serve under Ministers at the outset seems unwise. They prefer to abide by the ordinary rule that a public servant is required to fulfil any duty imposed upon him. It is, however, necessary to face the possibility that difficulties of various kinds may arise, and to consider how far these can be mitigated, and, when they get beyond mitigation, how they can be disposed of.

In all matters, both of ordinary administration and of discipline, where no rules can afford immunity, the task of making the new arrangements a success must fall largely on the Governor. The Government of India consider that this duty should be definitely and formally laid upon the Governor ; and that his rôle as protector of the public services should be known and recognized both by Ministers and the services. They suggest, therefore, that the matter should be incorporated in the regular instructions to Governors, and that a declaration to the same effect should be made in the course of presenting the reforms scheme to Parliament. The Governor will have every opportunity of watching the situation. He may be able to remove trouble by a few words of advice or persuasion. If the difficulty is acute or widespread, he may have to investigate it with the help of the joint advice of his Council and Ministers. But the Government of India think that the Governor in Council should not be brought in as a formal agency of arbitration in the grievances

of public servants. Such a course, they fear, would generate difficulties between Ministers and the Executive Council.

18. But in case the Governor's intervention fails, it seems necessary to provide a final safeguard ; and the Government of India think that, though no officer should have the option to decline to serve under the new conditions, they should have power at their discretion to grant any officer of the existing establishment for adequate reason permission to retire on proportionate pension. If the Government of India refused the application an appeal would lie to the Secretary of State. In the case of any disciplinary orders passed by Ministers which affected an officer's emoluments or pension there seems no choice but to allow a direct appeal to the Government of India and, if need be, to the Secretary of State. No officer of the India services should be dismissed without the orders of the Secretary of State, and all existing rights of appeal should be maintained.

19. The Government of India conclude that in two respects the Report cannot be literally translated into practice. In paragraphs 240 and 325 the protection of the interests of the public services is made the duty of the Governor in Executive Council. This, it is feared, would defeat the object which the Report intends to secure ; for the work of the public services cannot be formally made a reserved subject, and any less drastic measure of general protection would inevitably lead to friction between the two parts of the Government. Again, in the same paragraphs and in paragraphs 156 and 259, expressions are used which will be read as promising detailed support and protection to a public servant in the discharge of his duties. This, however, seems to involve too frequent intervention for working purposes. The Government of India think that all that can safely be guaranteed is in the last resort a right of retirement on fair terms, a generous right of appeal in clearly defined circumstances, and the steady influence of a vigilant Governor in the direction of harmonious working and good feeling. They think it necessary to make the position clear in this respect both to the Secretary of State and to the services.

20. The Government of India will now briefly review the proposed position as regards the India services. The basic idea is that the structure of the service, its duties and the

general conditions of its employment should remain as far as possible untouched by political changes, at all events until the advent of the first statutory commission. When a Minister is placed in charge of a transferred department he will take it over as a going concern with its staff intact. The Indianization of the services is an entirely separate matter and will be regulated in accordance with the general policy prescribed by the Secretary of State. The actual recruits, whether European or Indian, and in whatsoever proportion, will come into a service regulated on uniform lines and as little concerned with political controversy as possible. As in the past, rules of conduct should be maintained for all public servants, however employed, under standing orders of the Secretary of State. The services will be required to show the same diligence and fidelity to Ministers as to the official part of the local Government. The general conditions of their service will continue to be ordered by the service regulations (or by any special contract of recruitment), no difference being made wherever they are employed. And they will be amenable to the Minister's orders and discipline just as they will be in a reserved department to the orders and discipline of the Governor in Council. On the other hand, while Ministers will be supported in requiring their staff to carry out their policy, their employes will be protected, as now, against arbitrary or unjust treatment. To this end they will be given reasonable access to the authority by which they were recruited and they may not be dismissed without at least the order of that authority—a rule universally accepted at present. But the power of intervention between them and the public servants under their control should be kept down to the minimum, and the right of appeal from Ministers should be as little in evidence as possible. Appeals should lie only where emoluments or pensions are affected, but where they do lie they should lie up to the Secretary of State.

21. It will frequently occur that a public servant will have duties in both a reserved and a transferred department; the district officer will be the most prominent instance of this type. It will make for simplicity and avoid improper conflict of jurisdiction if for purposes of posting, promotion and discipline such officers are kept entirely under the control of that part of the Government which is concerned with the budget head from which their pay is met. It may have to be



arranged that Ministers will contribute to the emoluments of officers partly employed under them in a ratio to be fixed by the Governor (ultimately by rule), and similarly to their pensions on retirement. On the side of their work which concerns the transferred departments, such officers will have to take and carry out the directions of Ministers exactly as if they were whole-time officers in those departments. But they cannot be subjected to the discipline of two different authorities ; and if either part of the Government is dissatisfied with the execution of its orders there seems no other course than for it to represent the matter to the Governor. It will be one of the most important duties of the Governor to deal with a delicate situation of this kind.

### PROVINCIAL SERVICES.

22. It is recognized that the time must come, and may come soon, when Ministers will wish to take the provincial services of their departments entirely into their own hands, and to regulate their recruitment, pay, pensions, etc. The Government of India think that they should not do so until they have put these matters on a legal basis by legislation. They suggest that such legislation may reasonably be expected :—

- (a) to secure selection, over the widest possible field, on merits and qualifications, and to reduce the risks of nepotism ,
- (b) to ensure efficient training for the higher and more responsible duties ;
- (c) to guarantee discipline and integrity on the part of the employees ; and
- (d) to provide adequate pay, security of tenure, and satisfactory conditions of work in regard to such matters as pensions, promotion, and leave.

But pending the passage of such legislation, they consider that the determination of the conditions of the provincial service even in transferred departments must be left in the hands of the Governor in Council.

### *Recruitment.*

23. The Government of India think that all existing rules for recruitment should be maintained unless altered by the

Governor in Council. The requirements of different services differ, and it will not be possible to establish any uniform system. But the aim should be to eliminate the element of patronage, and to establish a system of appointment by examination before or after selection, or, where appointments are made direct, to set up some external authority for the purpose of advising. The actual appointment must in any case be made by the local Government, by the Governor in Council in the case of reserved subjects and by the Governor on the advice of Ministers in transferred subjects.

*Pay.*

24. *F. D. Despatch No. 233, dated the 31st October 1918.*—The proposal which holds the field is that the Secretary of State's sanction should not be required to any new appointment or the raising of the pay of any appointment above Rs. 1,450, outside of certain scheduled services which would closely correspond with the India services contemplated in this note. That limit would have the effect of removing from the Secretary of State's cognizance practically all questions of the pay of appointments in the provincial services. But on grounds of expediency the Government of India think that their own sanction, though not that of the Secretary of State, should be required in the case of posts on Rs. 1,000, the rate suggested for selection grades by the Islington Commission.

25. The only other limitation which it seems necessary to consider is the limit of cost of service reorganizations. At present if the additional cost exceeds Rs. 25,000 the Government of India's sanction is required and if it exceeds Rs. 50,000 the case must go to the Secretary of State. It has been proposed to give local Governments freedom of action up to Rs. 5,00,000, a limit sufficiently high to provide for all reasonable reorganizations of the most costly services. On one minor point it has hitherto been thought necessary to retain the Government of India's sanction, *viz.*, if the revision involves the grant of local allowances as compensation for dearness of living in any locality in which officers paid from India revenues are employed. The Government of India think it unnecessary to maintain this restriction.

*Allowances.*

26. There need apparently be no difficulty in treating this question on the same lines as for the India services. Local Governments would accept the guiding considerations laid down for each class of allowance by the Secretary of State and would use their discretion in applying them in particular cases. It may probably be assumed that there would grow up under the hand of the provincial Finance Departments provincial regulations on the subject which would, it is to be hoped, be of a simpler nature than existing codes.

*Foreign Service.*

27. This appears also to admit of the same treatment as in the case of the India services.

*Leave.*

28. As regards leave the desiderata seem to be—(1) to secure that the rules shall not be altered to the detriment of existing officers, (2) to enforce a certain similarity in the conditions of leave among officers of equal status, and (3) to admit of special variations on account of special conditions of work (civil courts) or possibly, for special remote areas, unhealthy conditions. The Government of India propose that they should frame fundamental rules as it has been suggested that the Secretary of State should do in the case of the India services.

*Superannuation and Pensions.*

29. It has been suggested above that before Ministers take over a service entirely they should embody among other standing provisions for the conduct of such service some provision for its pensions in the law. The Government of India think that from the inception of the reforms the central Government should set Ministers an example in this matter by legislating to secure the pensionary rights of the provincial services.

*Administration and Discipline.*

30. It seems to the Government of India that these matters can only be treated on the same general lines as for

the India services. The Minister must control the administration of transferred subjects, including such matters as postings and promotions. The Governor must be instructed to control him with a watchful eye to the well-being and content of the services. Officers cannot be given any option as to the transfer, but officers finding their position intolerable should be able to ask for a proportionate pension. Such applications should go to the Governor and an appeal should lie from his decision to the Government of India. Only in disciplinary cases affecting emoluments or pensions should there be a regular appeal, and it should lie to the Government of India and from them if necessary to the Secretary of State.

31. The general conduct rules in respect of borrowing, presents, indebtedness, buying property, political activity, etc., should be maintained in respect of provincial no less than in respect of India services by standing orders of the Secretary of State.

### THIRD DIVISION.

32. This would embrace the minor executive posts, the bulk of the ministerial establishments, the menial servants and the like. Some superior ministerial establishments would probably rank in the provincial division. In respect of the third division there is an obligation to see that the rights and privileges of present incumbents are maintained and that in particular their pensions and provident funds are secured. This object can, perhaps, be secured by directions to the Governor in Council as regards reserved and instructions to the Governor as regards transferred subjects. The Government of India recognise that present incumbents would probably greatly prefer to see their pension and provident funds secured by legislation by the Government of India. As regards future incumbents, they think that, subject to what is said below as to a Public Service Commission, it can only be left to the Governor in Council and to the Governor and Ministers to regulate the entire working of the service.

### PUBLIC SERVICE COMMISSION.

33. In most of the Dominions where responsible government has been established, the need has been felt of protecting the public services from political influences by the estab-

lishment of some permanent office peculiarly charged with the regulation of service matters. The foregoing proposals have assumed that every effort must be made to fulfil the pledge given to the services, and indeed to secure the main services firmly on their present lines. For this purpose, indeed, it cannot be said that any organization, other than the official Governments, is at present required, or that its introduction will be felt as otherwise than embarrassing to local Governments and Ministers. Nevertheless the prospect that the services may come more and more under ministerial control does afford a strong ground for instituting such a body in the beginning, while such a step would be entirely in keeping with other features of the scheme like the proposals for treasury control and audit. The Government of India have accordingly considered whether there are any concurrent grounds for taking the matter further.

34. The Public Services Commission have proposed not merely that for certain services examinations should be held in India, but that to a great extent direct appointments, on the advice of selecting Committees, should also be made. For the former purpose no agency exists and some agency must be set up. As regards nominations the need for regulation is obvious. The present distribution of patronage, however conscientious, does not escape criticism, and is extremely laborious, for which reason it is very desirable to set up without delay some more impersonal method of selection. It is, moreover, clear that the reconstitution of the public services will involve much re-classification, and much reshaping of rules and regulations, as well probably as legislation in India. A Public Service Commission could give valuable help to the Home and Finance Departments in settling these matters. It seems likely that an efficient office would establish its position both with the Government of India and local Governments. It would come to be regarded as the expert authority on general service questions (as distinct from cases of discipline in which the desirability of allowing it to intervene requires further consideration). The following list of duties suggest itself for it :—

- (i) to hold the examinations and to arrange for the selection in India of entrants into the India services under the orders of the Secretary of State ;

## THE INDIAN CONSTITUTION.

- (ii) to perform the same functions for provincial services in accordance with the policy of local Governments ;
- (iii) to advise upon and arrange for recruitment for the Government of India offices ;
- (iv) to advise local Governments, if required, on the qualifications to be laid down for their subordinate services ;
- (v) to advise, if required, on all general questions of service reorganization, and especially on proposed legislation or changes in the regulations ,
- (vi) to advise educational authorities as to the educational requirements of the public service ;
- (vii) to conduct departmental examinations and perhaps language tests, possibly absorbing the existing Board of Examiners ,
- (viii) to act as an advisory authority in cases where the interpretation of service rules is in dispute.

35. Although at this stage it is not possible to define the utilities of the office with precision, there seems reason for thinking that the value of a Public Service Commission would outweigh the objections to it. The Commission should be appointed by the Secretary of State, whose responsibility for the maintenance of the services would by this means be made manifest. It would, of course, have provincial agencies in the provinces. Provision for the appointment would be made in the new statute, and the duties of the office would be regulated by statutory orders of the Secretary of State.

### *Summary.*

36. The general scheme may be summed up as follows :—

(i) Concurrently with reforms, legislation should be undertaken in Parliament to declare the tenure and provide for the classification of the public services. It should secure the pensions of the India services and should empower the Secretary of State to make rules for their conduct and rights and liabilities, and to fix their pay and regulate their allowances. The Bill should also provide for the establishment of the Public Service Commission and its duties.

(ii) The Government of India should pass a Public Service Act providing for the tenure and pensions of all provincial public servants and empowering the Governor-General in Council to define their other rights and liabilities by rule and leaving all other matters not so regulated to the Governor in Council. The Act should also secure the pension rights of existing members of the subordinate services and should empower the local Governments, herein including the Governor and Ministers, to make rules for them in all other respects. It would then be necessary for a Minister who wished to take over complete control of the services in transferred departments to introduce provincial legislation amending the Act, to which under section 79 (2) of the existing statute the previous sanction of the Governor-General would be necessary.

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## ANNEXURE V.

### MEMORANDUM ON FINANCE.

#### I.—THE EXISTING SYSTEM (CENTRAL).

The financial system of India may be considered under the following heads.—

- (1) Pure finance ;
- (2) Control of revenue, including taxation and loans ;
- (3) Control of expenditure ;
- (4) Accounts and audit.

All these, with the exception of audit, which is given an acknowledged, though not a statutory, independence, are under either the direct or the general administration of the Finance Department of the Government of India. That department is also entrusted with the detailed administration of certain heads of revenue, its functions in this matter having been explained in the separate departmental memorandum recently submitted to the Subjects Committee.

#### (a) *Pure Finance.*

2. Pure finance is an expression which, for want of any better description, may be taken as covering the control of

currency, including the mints, the service of the public debt; and the complicated mechanism for maintaining a gold standard in a silver country, which involves the regulation of the sterling exchanges. The Finance Department is also closely associated with the banking and credit system of the country. On all these points, however, the reforms scheme does not touch, and no detailed description of this side of the work will be prepared unless the Committee desire it.

(b) *Provincial Settlements.*

3. In dealing with the public revenue and expenditure, the financial system has been to a large extent decentralised. Provincial Governments have been given control, which had small beginnings but has been steadily enlarged, by the device of financial settlements or contracts. It would require a whole treatise to describe the complexity of these provincial settlements. They have been clearly pictured in paragraphs 104 *et seq.* of the Report, but the underlying idea may briefly be recapitulated as follows. The accounts of India are divided into two sections, known as Imperial and Provincial. The division is partly natural, but also in part highly artificial. In the Imperial section are classed the receipts and charges of certain departments which as a rule are All-India in their character:—Army, Railways, Post Office, etc., etc. All other departments figure in the Provincial section, but in some cases a share, it may be of the gross revenue, or it may be of the net revenue, is credited in the Imperial account. The heads of receipt and expenditure which are shared in this way are known as “divided heads”; and the method of division has been determined in making the settlements or contracts with the different provinces. These settlements used to be made for five years; they are now supposed, in most provinces, to be permanent. The theory of the settlement is firstly to decide what departments each local Government is going to finance, and then to give the Government such a share of the revenues which it collects as will cover the outlay in those departments and will meet their growing needs. Deeper-seated than this theory, it may be argued, was the paramount necessity of providing the central Government with adequate funds for the expenses of its large spending departments; the proceeds of the purely Imperial heads of revenue would never have sufficed



without taking from the provinces some part of their provincial collections.

4. Under this system there has always been a competition between the growing needs of the central Government and the equally growing needs of the provinces ; and from that competition there arose, in our past history, inequalities of treatment, sacrifices by the thriftier provinces, and relative extravagances by the more powerful provinces, which lie at the root of the chief difficulty in provincialising revenues to-day. This point will be adverted to again at a later stage in the memorandum. For the present it will be sufficient to note that the effect of these provincial settlements was to keep the powers of taxation centralized. So long as the settlements were revisable at short intervals, the growing needs of the provinces could be met by ceding further shares in the divided revenues, and the provinces were thus rarely required to impose taxes of their own. Since the settlements became permanent, there has been a period of prosperity that has rendered provincial taxation unnecessary. Taxation thus has been left in practice, except for purely local purposes, almost wholly a matter for the central Government.

5. In the foregoing rapid account of the provincial settlement system, no reference has been made to the many qualifications attaching to individual provinces. In some provinces, for example, where droughts are frequent, the central Government has guaranteed a minimum revenue under certain heads ; there is also an elaborate scheme of famine insurance. These and similar points can be further developed if the Committee require the information.

6. From the above it will be apparent that the control of revenue and expenditure in the Imperial section of the accounts rests with the central Finance Department, while in the provincial section it is largely in the hands of the Finance Departments of the various local Governments. The system of divided heads, however, allowed the central Department to interfere, on the plea of safeguarding its own interests, with provincial operations. The fact that the provincial figures are carried into the Imperial budget also provided an opportunity of intervention in the interests of accurate estimating. Apart altogether, therefore, from the Secretary of State's supervision over Indian revenues and their expendi-

ture, there were inherent in the system itself certain obstacles to the financial independence of local Governments, which the Report has set itself to remove. Its proposals on this subject will be discussed later.

(c) *Control of Central Revenues*

7. This narrative may now proceed with the working of the central Finance Department in connection with central subjects. Its concern with the revenue-producing departments is universal; but its intervention varies largely with the agency of assessment and classification. In the working of the railways, for example, it is rarely invoked except in broad matters of policy, and in settling the annual estimates and the programme of development loans. In connection with opium and salt, on the other hand, its grip on the administration is very much tighter. With this aspect of the work, however, the Committee is possibly not greatly interested, and no details are, therefore, elaborated. Some allusion, however, is necessary to the functions of the Finance Department in connection with taxation, borrowing and the disposal, when it occurs, of a large revenue surplus.

(d) *Control of Taxation.*

8. As has been already explained, the past relations between the central and the provincial Governments have led to the former making itself responsible for all fresh taxation that is required by the needs of the country as a whole. The penury of any one province might indeed drive—and has in fact helped to drive—the central Government to impose general taxation; but the provincial settlements were based on the theory that they left the provinces with adequate resources, and thus under no necessity to raise taxation of their own. This centralisation of taxing powers was justifiable while the central Government continued to emphasize the financial subordination of the provinces, and held an arbitrary power to keep the provinces within the four walls of their settlements. As soon as local Governments are given a greater measure of independence over their own funds, the position will obviously change and the right of a province to impose its own taxation must be recognised.

*(e) Control of Borrowing.*

9. In the matter of borrowing, the policy of the Government of India has always been cautious and conservative. Before the war the loans raised in India were extremely small (£3 millions used to be regarded as a dangerously large issue in one year); the rate of interest was rigidly kept down; and except in regard to emergencies, there was no borrowing save for productive works. The central Government was then able to secure the cream of the market; and it adhered very firmly to this privileged position. Local authorities, such as port trusts and the larger municipalities, were allowed, under very definite restrictions, to float small loans of their own on local security, but a corresponding privilege was never accorded to the provinces. All our loans issued on the security of the whole revenues of India. If a province required loan money, central Government found it and the province had to pay interest. The position obviously gave the central authority, a powerful lever for insisting upon provincial solvency, and for continually interfering in detail for that purpose. This tutelage extended even to what is known as the provincial loan account. The account in question is that from which a province makes agricultural advances, loans to estates under the court of wards, and the like. The procedure is that the whole of the capital required is handed over by the central Government to the province, which administers the loans and pays back the net recoveries to the Government of India each year, along with interest calculated upon the mean of the capital in its hands during the year. The province is authorised, but here again only under the orders of the central Government, to charge rates of interest higher than it pays for the accommodation, the understanding being that the difference is left to it in recognition of its services in managing the account, as well as to cover bad debts.

*(f) Control of the Revenue Surplus.*

10. When the Government of India found themselves, towards the close of a financial year, faced with a much larger surplus than they had budgeted for, it was the practice before the war to distribute some part of the windfall among the

provinces. This policy was particularly active during the years before the opium trade with China was shut down, when enormous prices were being paid for our opium, and the money was utilised for what it was then hoped would be the beginnings of a more active educational programme. These grants, or "doles" as they were opprobriously called, out of the revenue surplus fell into very bad odour. The Government of India were accused of pushing money out of their account in order to avoid charges of defective estimating, and the money sometimes fell to local Governments so unexpectedly that they were unable to prepare sufficiently careful schemes for its economical employment. The critics hardly did justice to the Government of India. With a debt which is almost wholly productive, there had not grown up the practice of employing the surplus of the year in the purchase of Government stock. It was also perfectly proper that the central Government should allow the provinces to share in its own good fortune, especially as most of the settlements were recognised to be tight. All this, however, savours of past controversy. What remains an important lesson is that these doles afforded another opportunity to the central Government to be inquisitorial about the methods of provincial expenditure. The temptation to pursue a dole until it was finally spent and to criticise its expenditure was repressed so far as possible; but at one time it had not been resisted, and local Governments may still be suspicious of its revival.

*(g) Control of Central Expenditure.*

11. In controlling the expenditure of central subjects, the Government of India are now largely in the position of enforcing, on behalf of the Secretary of State, restrictions which he has imposed. These restrictions are contained in the vast complexity of the Civil Service Regulations and various departmental codes; and also in a series of general standing orders, which have been brought together in a convenient compendium known as the Book of Financial Powers, and some description of the latter will be given below. Besides being responsible for obedience to these orders, the Finance Department of the Government of India is the custodian of the interests of economy and general financial propriety. It is placed in a position to give effect to this

responsibility by rule 13 of the rules of executive business made by the Governor-General, which runs as follows :—

“No proposal involving an abandonment of revenue for which credit has been taken in the budget, or involving expenditure which has not been provided for in the budget, or which, though provided for, has not been specifically sanctioned, shall be brought forward for the consideration of the Governor-General in Council, nor shall any orders giving effect to such proposals issue, without a previous reference to the Finance Department.” —

The rule is subject to certain exceptions relating—

(a) to cases requiring great secrecy or despatch, in which the Governor-General is empowered to waive the necessity for a previous reference to the Finance Department, and

(b) to certain delegations to the great spending departments namely, the Army Department, the Commerce and Industry Department (for the Post and Telegraph Department,) the Public Works Department (for civil works and irrigation works) and the Railway Department, provided that the expenditure proposed is not of a character for which the sanction of the Secretary of State is required, and subject also to certain conditions with regard to budget provision and reappropriation.

12. The effect of this procedure is to give the Finance Department an opportunity of criticising all new expenditure of any importance, and of also inviting the department in the Government of India which is interested in the purpose of the expenditure to examine the project in its administrative aspects. It can challenge the necessity for expenditure; it can bring to notice obvious objections or extravagances; it can call for facts to which it considers that sufficient weight or sufficient publicity has not been given. But it cannot, as a Department, overrule either a local Government or another Department of the central authority. Stress is laid upon this statement of fact because it has an important bearing on certain proposals which are made below regarding financial control in the provinces. If the central Finance Department has to combat unnecessary or extravagant outlay, its success depends upon the support of the Governor General in Council.

In questioning expenditure which is improper rather than excessive it can always demand a reference to the Secretary of State under the standing order which requires his sanction to charges which are "of an unusual nature or devoted to objects outside the ordinary work of administration." This defence, however, is rare, and the real strength of financial control lies in the ability of the Finance Department to ask the Governor-General to take any proposal for expenditure into consideration, if necessary, in full Council. The procedure has worked well, and no change in it is now recommended. As regards the functions of the Finance Department in the matter of excesses over budget grants and reappropriation of savings for other expenditure, the Department has to assume a position which in other countries is taken up by the legislature itself. This is inevitable under the present constitution and it is rendered effective by the general official training and traditions of financial propriety. Here also no alteration in our existing methods is proposed.

*(h) Control over provincial expenditure.*

13. Thus far the memorandum has dealt entirely with central receipts and expenditure. It has now to discuss the relations between the central Finance Department and the provinces. The mainspring of control over provincial expenditure lies in the orders of the Secretary of State to which allusion has already been made. Under the general standing orders the sanction of the Secretary of State is required before any new post is created which would ordinarily be filled by a gazetted English officer; before any post is created on pay of over Rs. 800 a month, before any honorarium can be given to a public servant exceeding Rs. 1,000. No grants of land may be made except on special conditions; no charitable grants exceeding Rs. 10,000 a year are permissible; no motor-cars may be purchased for public business; and so on. These are some of the more general orders, and give no index to the multiplicity of directions in the various codes. There are other restrictions which the Government of India are instructed by the Secretary of State to impose upon provinces, without the central Government's permission, they may not undertake fresh taxation, they may not alter the rate of discount upon the sale of stamps, they may not raise a loan, they may not delegate

their own powers to any subordinate authority, and so on. All these regulations give the Finance Department an infinite power of putting its finger into provincial affairs. A provincial project has to come to the Finance Department under one of these many orders; that department sends it to the administrative department concerned, and asks its advice on the necessity for the projected outlay. Hence follow delays, further inquiries, and much vexation to the province which has been anxious to get the business pushed through. Much of this is inevitable so long as financial sanction is used as the gateway to administrative control. There used to be sound reason behind the procedure, in the absence of any popular opinion to influence official schemes, and the honest determination of the Government of India to look at every project of expenditure from the point of view of the taxpayer. With the growing strength of public criticism and the increasing influence of legislative councils, this attitude may well be modified. The Government of India have recently asked for wide relaxations of the Secretary of State's authority; but a more radical remedy seems desirable, and the Report has shown where it is to be sought for.

## I—ACCOUNTS AND AUDIT.

14. On the fourth head mentioned at the outset of this memorandum, the Auditor General, Mr. M. F. Gauntlett, has been good enough to prepare a separate note which accompanies this paper. It is unnecessary for the Government of India to do more than give Mr. Gauntlett's proposals their general endorsement, there are indeed certain details upon which they must reserve judgment. They accept his description of his ideals for the future and of the methods of working towards them. The step which the Government of India regard as an essential preliminary to any change is that the Auditor General should be made a statutory officer and that the Bill, or the rules made under it and presented to Parliament, should confer statutory powers upon him and his audit officers. The separation from the accounts offices of currency work and other incidents of general finance is on the merits desirable, and can be worked out at leisure. The more responsible auditors are already over-worked. A good deal of their labour can be abolished by simplifying the codes, and

possibly also the form of accounts, but on the other hand a far greater degree of responsibility will be laid upon them if a more progressive system of audit is accepted, for a larger strain will be imposed upon their discretion and judgment, and less upon their mechanical industry. It is also most advisable that the superior audit officers should be able to move about and see for themselves the working of the establishments whose accounts they inspect. Further examination of this subject, however, will have to be made before definite proposals can be laid before the Secretary of State, and it may be that the Committee will be satisfied by an assurance from the Government of India that the matter will be pursued. Meanwhile, the audit should be under the independent control of the Auditor-General and the accounts under the central control of the Government of India.

## II.—THE EXISTING SYSTEM (PROVINCIAL).

15 In the provinces the Finance Department is a microcosm of the central finance organization. Its powers under a council government cannot be confidently discussed in this memorandum, as the rules which a Governor makes for the conduct of his executive business do not require the assent of the Government of India. The Committee, however, will easily elicit the procedure in evidence. Generally speaking, the control of the provincial finance department is acknowledged in theory, but in practice its strength varies greatly with the disposition of the executive government, and depends largely upon personal influence and the amount of backing received from the head of the province. In the *quasi*-commercial branches of the administration, particularly irrigation, it is believed that the financial control and the observance of strict economy are almost entirely at the discretion of the departmental officials. Other branches are more closely watched, but the power of the Finance Secretary to a local Government is far from always being as definite as it ought to be. This is especially the case in connection with excesses over budget grants and the unduly wide liberty of reappropriating funds from one grant to another and entirely separate purpose. There is also a tendency for the spending departments to budget for expenditure of which the details have not been presented to the Finance Department for the



necessary criticism. In all these respects the Government of India apprehend that the system will require to be tightened up before the introduction of the new regime.

### III.—THE REFORMS PROPOSALS.

16. It is now time to turn to the changes of system advised in the Report. These are based upon the intention of "giving the provinces the largest measure of financial independence of the Government of India which is compatible with the due discharge by the latter of its own responsibilities." The Report proposes to approach this independence by two methods: (a) radical changes in the basis of the provincial settlements (paragraph 201), and (b) the relaxation of the powers of control (paragraph 292) which vest in the Secretary of State. Under the first head it is proposed to abandon the system by which a province is given just enough for its needs, while the central authority becomes, so to speak, the residuary legatee of all the revenues. In place of this the central services will have adequate resources secured for them and all the other revenues will be handed over to provincial Governments. Under the second head it is proposed to delegate financial powers by detailed modifications of the Codes and Standing Orders. With these principles of action the Government of India are in full accord; but they would like it to be perfectly clear that their own responsibility will now stand on correspondingly narrow ground. They recognise that, with the invaluable help of the audit, they have a general responsibility for the observance of financial propriety and the avoidance of waste. They recognise also that they cannot avoid the liability of preventing a province from becoming insolvent or from being unpunctual in paying its debts. These duties rest upon the Government of India so long as they are responsible to Parliament for the good administration of the country. They conceive, however, that with the grant of this new financial liberty to the provinces, they are no longer required to watch the financial proceedings of local Governments in detail, or to enforce from day to day measures which they consider necessary to keep the finances of a province in a healthy condition. Their intervention in future will take the form first of advice and caution, and finally, if caution is neglected, of definite orders which a province has to obey if it wishes to retain its constitution.

17. The relaxation of Codes and Standing Orders which the Government of India will recommend to the Secretary of State will involve much detailed labour of a highly technical kind ; and it is probable that the Committee may not be disposed to examine this part of the case with any closeness. Put very briefly, the suggestions of the Government of India would be that the Secretary of State should be invited to lay down certain broad canons of financial propriety, to schedule the precise classes of expenditure to which his prior sanction is required, to formulate certain fundamental rules for the conditions of public service and probably several cognate matters, and then to leave all other powers to the authorities in India. In purely financial matters the Government of India would, in pursuance of their ordinary policy, pass on to the provinces whatever powers they get in dealing with the non-central subjects, except in so far as the Secretary of State may, in any specified subject, make his delegation conditional on special surveillance being exercised by the central Government in India. The devolution of any part of a provincial Government's own financial powers to authorities subordinate to it forms another branch of the question, about which local Governments will obviously have to be brought into consultation before ever any general principles can be enunciated.

18. The new arrangement, pivoted on the abolition of "divided heads," for distributing the financial resources and liabilities of the central and the provincial Governments is, as has been said, accepted by the Government of India in principle. Of the actual figures a further analysis will have to be made. It seems probable that certain charges, particularly in the Home account, which have hitherto been taken as central can properly be transferred to the provinces ; the payment of pensions in England is a case in point. It may also be desirable to eliminate some of the abnormalities due to war from the budget figures of 1917-18, upon which the calculations in the report are based. The provincial contributions tabulated in paragraph 206 may, therefore, have to be modified, in consultation again with the local Governments concerned ; but the principle of assessing them by an all-round ratio of the gross provincial surplus will be maintained. The patent inequity of the result, however, is a matter of grave anxiety to the Government of India. It is due, as the report explains, to historical causes. Chief among these is the

Permanent Settlement, which prevents certain provinces from yielding the same proportion of the agricultural rents to the public exchequer as others in which the land revenue assessment is periodically revised. Another cause has been alluded to above—the different pace of the growth of expenditure in different provinces in the past. In some the standard was much more progressive than in others ; in some it was deliberately kept back in order to help the central Government in its days of financial stress after the last Afghan war and before the closing of the mints. The disproportionate share of their revenues which the central Government thus got into the habit of taking from the provinces has hitherto been obscured by the existing settlement system ; and of the new arrangements nothing worse can be said than that they bring into prominence what had formerly been disguised ; they impose no fresh burdens.

19. Nevertheless, they show that it is impossible to perpetuate the present inequality. Critics will tell us that the provinces which have rendered the greatest financial aid to the Empire of India in the past are now being penalised for their loyalty. It will also be urged that one of the first duties of a responsible Government is that it should be responsible for paying its own way. To meet these objections it is desirable to lay down, not only the immediate scale of contributions, but also a standard scale towards which the provinces will be required to work as a condition of the new arrangements. The Government of India cannot advise that the first step towards the standard should be deferred until the matter is investigated by the statutory commission (paragraph 207). They recommend that the first alteration of the contributions in the direction of the standard scale be effected six years after the new arrangements come into force, and that definite provision be made for reaching an equitable ratio of contributions in definite stages. What particular ratio should be regarded as most equitable is a matter of opinion, on which Local Governments would wish to be heard. The Report discarded the idea of an assessment on the gross provincial revenue ; and this would clearly be inadvisable as tending to discourage the growth of revenue which must be aimed at in every province where the contribution has to be enhanced. The Report also condemned an all-round contribution on a *per capita* basis, the objection being that the rate could not, in

present circumstances, be the same for all provinces. Though this is true at the moment, it would not be a valid argument against accepting a *per capita* basis as the ultimate standard, for which there is much to be said in view of the fact that the services rendered by the central power to a province (particularly the service of defence) may quite fairly be valued by the measure of population. An even more satisfactory basis for the ideal standard would be the gross provincial expenditure, for the gauge of each province's capacity to contribute to the central authority may very reasonably be taken to be its capacity to spend for its own purposes, famine charges or the outlay on any wholly abnormal and unusual emergency being of course excluded from the calculation.

20. Provincial Governments will now, the Report advises, be given the right to impose taxes of their own within the limits of a schedule of permissible classes of taxation. If they wish to go outside this schedule, the prior sanction of the Governor-General must be obtained to the proposed legislation; and this restriction will presumably be added to those already catalogued in section 79 (3) of the Government of India Act. To this part of the scheme the Government of India readily agree, but they do not think it necessary that a Bill propounding a tax which is within the schedule be forwarded to them before introduction. The reason for this suggestion in the Report was presumably that a local tax may encroach on the sphere of central taxation without infringing the letter of the permitting schedule, a license-tax, for example, might virtually be an income-tax, or a dock duty in addition to the Customs tariff. The law, however, would appear already to provide sufficiently against such encroachment (section 79 (3) (a) of the Act), and the veto could reasonably be employed in case of doubt; the less executive interference there is with provincial legislation, the better. The schedule of provincial taxes which may be imposed without further sanction, might include the following:—

- any supplement to revenues which are already provincial; *e.g.*, cesses on the land, enhanced duties on articles that are now excisable, higher court-fees, increased charges for registration, etc.;
- succession duties;

# REPORT OF THE FUNCTIONS COMMITTEE.

duties upon the unearned increment on land ;  
taxes on advertisements, amusements (including totalisators), and specified luxuries ;

but it should not include any increment to the revenues of the central Government, any addition to the list of articles which are now excisable, or any duty (except as allowed above) on imports from without the province. The schedule should be established by rule and not by statute, so that it can be corrected or enlarged in the light of experience.

21. On the subject of provincial borrowing the proposals in the Report have the entire concurrence of the Government of India. There has been some criticism from the provinces. Some local Governments apparently desire an unfettered power of raising loans for provincial purposes, several of them demur to any scrutiny by the central Government of the purposes for which a provincial loan is raised or required. In dealing with these claims the financial situation of India as a whole must be regarded. There are the following liabilities for redeeming or funding temporary unproductive debt in the near future :—

	£
1919 Treasury Bills as on 16th November 1918 . . .	19 millions.
1920 Three-year war bonds . . . . .	13 "
1921 Ditto . . . . .	15½ "
1922 Five-year war bonds . . . . .	8 "
Cash certificates, say . . . . .	5 "
1923 Five-year war bonds . . . . .	1½ "
1925 Seven-year war bonds . . . . .	2½ "
1928 Ten-year war bonds . . . . .	10½ "

These are big figures for the Indian market. There is also the certainty of having to borrow heavily for railway development. The Government of India must, therefore, keep a tight hold upon the market, and cannot afford to be embarrassed by unrestricted competition from the provinces. Again, when the demand for loan funds exceeds the supply which the Government of India can make available in any year, there must be some rough measuring of the relative merits of the proposed expenditure before the central authority makes the final allotment. It goes without saying that the Government of India will have to give priority to loans required by a province either (a) for famine relief and its consequences, or (b) to finance its own

Provincial Loan Account, which, it may incidentally be mentioned, will now in each case be taken over by the local Governments from the central exchequer. Apart from those special cases the general rule may with propriety be laid down that a province is not to borrow except for capital purposes. This term is capable of more precise definition, but may be provisionally taken as debarring a loan for an object which is not virtually a permanent asset of a material character. The establishment of sinking funds might also be prescribed, at least in the case of unproductive debt. If a province which has been permitted to borrow in the open market infringes these rules, its action will be challenged in audit, and would ordinarily be regarded as detrimental to the solvency of the provincial Government.

22. The hold previously retained over the balances of a province by the Government of India had two lines of justification. In the first place, the central authority is the banker of all public funds, and has to take precautions against withdrawals which may disturb its often fine-drawn calculations of ways and means. In the second place, it had to be vigilant against action by a local Government which might break down the provincial settlement and leave it a claimant for help from central revenues. There is in consequence a stand-in order that local Governments must, apart from famine requirements, retain minimum balances of the following amounts :—

Madras, Bombay, Bengal and the United Provinces	20 lakhs each.
Burma and Bihar and Orissa . . . . .	12   "   "
Punjab, Central Provinces and Assam . . . . .	10   "   "

There are certain other rules controlling the operation of provincial Governments on their own balances. Furthermore a province is not supposed to budget for a deficit unless it satisfies the Government of India that the excess expenditure is exceptional and non-recurring. In these respects several changes will ensue from the financial emancipation of the provinces. The report advises (paragraph 208) that there be "no more ear-marking of any portion of provincial balances", but this statement needs, in the Government of India's opinion, some modification and extension. To begin with, definite regulations are desirable for the famine assignment made in the settlement with a province (paragraph 204). This

annual assignment is cumulative, and should either be earmarked in the provincial balance or invested, in so far as it is not spent on purposes which, in the local Government's recorded opinion, will have a direct and calculable effect in palliating the consequences of drought. Secondly, the rules as to minimum balances and sanction to a budget deficit should be abrogated, and local Governments left to their own responsibility in these matters. Thirdly, a regulation will be needed to the effect that a local Government must give timely intimation of its intentions regarding drawing in each financial year on its credit with the Government of India, and that it be required, in the absence of famine or other grave emergency, to adhere to its programme. This information would provide the central government, in case of war or similar crisis, with the opportunity for inviting local Governments to co-operate (which in the last resort it could require them to do) in conserving the financial resources of the State.

23. The reference to ear-marking in the report has a special significance in regard to "doles". It would, in the Government of India's judgment, be inconsistent with the greater financial independence of provinces that grants should be made in future from the central exchequer for the purpose of imposing a particular line of policy upon local Governments, who would in turn have to account for the employment of the moneys. There is, of course, no reason against a business arrangement with a local Government by which it will take a subsidy from central funds for carrying on some work in which the central and the provincial authorities are jointly interested. But, generally speaking, when the Government of India find that their revenues are becoming in permanent and substantial excess of their requirements, their usual course will be, it is conceived, either to remit central taxation or to make a rateable all-round reduction in the contributions which they take from the provinces. Against this there must be set a corresponding liability on the part of local Governments. One province has made the impossible claim that the scale of provincial contributions, once fixed, shall never be raised. Obviously the Government of India retain the right, in case of war or grave financial trouble and if they have to decide against adding to the central taxation, of taking a rateable temporary increase on the provincial contributions, subject to a fair understanding with the local Governments as to the

remission or even the repayment of the enhanced levy when the situation of central finance permits.

#### IV.—PROVINCIAL FINANCE UNDER THE NEW SYSTEM.

24. In an earlier part of this memorandum it has been suggested that the control of central finance may safely be left to the same agency, and pretty much on the same footing, as at present. In the provincial sphere, however, large changes will be necessary, and an attempt to forecast them briefly will now be made. The wide relaxation, which is expected in the Secretary of State's control, and the release of local Governments from much of the present central surveillance over their financial proceedings, will unite in casting a very much heavier burden of responsibility upon the Finance Departments in the provinces. This will certainly be enhanced by the dual character of the spending power in the province. Whatever view be taken of the proposals in the Report for financing "transferred" subjects, it seems clear that the introduction of two final authorities for the preparation of projects to be inserted in the same budget, and for the sanction of expenditure from the same budget must make the finance more complex and decidedly more delicate than it is to-day.

25. Before the functions of a provincial Finance Department can be discussed with any confidence, it is necessary to decide one most important preliminary. The provincial Government of the future will consist of two parts. The Governor in Council is to retain certain of the sources of revenue and certain of the chief spending departments. Ministers will virtually be responsible for collecting certain other classes of revenue and for controlling certain other spending departments. Is each of these authorities to have a separate Finance Department of its own? Are there to be two agencies of financial control, one for the reserved subjects under the Governor in Council, and another for the transferred subjects under the Governor with his Ministers? In favour of this solution there is the argument that each part of the provincial Government should be a self-contained unit, and the fear that a combined Finance Department would thwart the independence of Ministers in dealing with the subjects for which they will be responsible. On the other hand, there is no argument



of method in support of the idea of separate Treasuries. As between reserved and transferred subjects there may be slight differences of procedure ; but the standards of propriety in collecting and spending public revenue, and the ideals of financial probity, must be identical in every branch of the administration. Nor is there any argument of convenience, as it will be more advantageous to have the whole financial control under one roof. And of course there would be no economy in having two full and separate financial staffs, especially as the work on the transferred subjects will at the outset be only a small part of the total provincial finance. In the opinion of the Government of India the need for unity and strength of financial control is decisive, and they unhesitatingly recommend that there be one undivided Finance Department in each province. It would be a reserved department, as by far the greater share of its work would be on reserved subjects ; its duty will be the all-important duty of helping both parts of the Government to insist on a high standard of probity in handling the money of the tax-payer ; and its functions, if properly administered, will bear some analogy to those of the judiciary.

26. A suggestion has been made that, in order to mark the relations of the Finance Department with both parts of the Government, it should be placed under a sort of Treasury Board, consisting of one Member of Council and one Minister. The idea is impracticable, as it would lead to delays, divided decisions, and unnecessary opportunities for friction. But the dual interests of the Finance Department can be effectively safeguarded in another and more helpful manner. The Government of India consider that, at least in all the larger provinces, there should be, in addition to the regular Finance Secretary, a second or Joint Secretary, whose business it will be to deal with all cases coming from departments under the control of Ministers. The selection of the officer to fill this appointment would be made by the Governor in deference, whenever possible, to any choice expressed by Ministers. He would be Financial Adviser in all transferred subjects ; he would be wholly at the disposal of Ministers, to help and advise them on the financial side of their work ; he would prepare their proposals of expenditure and the like for presentation to the Finance Department, and he would see that their cases were properly understood in the department and promptly dealt

with. He would act in liaison between the Finance Member of Council and Ministers, and would ensure that transferred subjects get the same technical assistance and care in their financial bearings as reserved subjects. This arrangement, it is hoped, will dispel any apprehension that a unified Finance Department will detract from the authority of Ministers in managing their own portfolios. The function of the Finance Department in truth is not an over-riding power. It is not a body that either dictates or vetoes policy. It watches and advises on the financial provisions which are needed to give effect to policy. It criticizes proposals and can ask for further consideration. It points out defects in methods of assessment and collection, it can demand justification for new expenditure; it can challenge the necessity for spending so much money to secure a given object. But in the last resort administrative considerations must prevail. If there is a dispute regarding expenditure on a reserved subject, the Finance Member may urge that it is wrong or wasteful or that it will entail fresh taxation. But he can be overruled by the Governor in Council. If the dispute relates to expenditure on a transferred subject, the Finance Department may similarly expostulate. But the Minister in charge of the particular subject can overrule it and its objections, taking the full responsibility for so doing. In England he would, in theory, have to get the Cabinet to endorse his view in such a case; in an Indian province he would need only the concurrence of the Governor. As practice crystallizes and grows familiar, Ministers will find friendly and valuable help from the Finance Department in developing their schemes of expenditure on sound and economical lines.

27. It is now possible to examine briefly the duties of a provincial Finance Department thus organized; its relations to both parts of the local Government being precisely the same, under the system of provincial finance set out in the report.

(1) In its association with the revenue departments the Finance Department will exercise steady pressure in the direction of efficient assessment and collection of every kind of State receipt. There is little more to be said on this branch of the subject; the department will consolidate its position with experience.

(2) It will examine all schemes of new expenditure for

which it is proposed to make budget provision; and an invariable rule should be established that no new entry may be inserted in the Budget until it has been scrutinized in the Finance Department and unless the department's opinion upon it is available to the legislature. At this stage the duty of the department is to discuss the necessity for the expenditure and the general propriety of the proposals. It has also to advise as to the provision of the requisite funds; whether they can be met from the existing resources of the province, or whether they will involve new taxation; or in the alternative whether they constitute a proper purpose for borrowing. Should new taxation be contemplated, it would be the Department's duty to criticize the proposals, to advise and estimate. This duty of the Finance Department is a preliminary to *Budget sanction*.

(3) The next duty of the Finance Department relates to the entirely different matter of *Expenditure sanction*. Here it is important that each province should have a rule of the same purport as the existing Government of India rule quoted in paragraph 11 of this memorandum. Insertion of a project in the Budget means that the legislature gives the proper executive authority a power to sanction the expenditure, it is not an order to disburse the money. That order must be given separately by the duly empowered authority; and it should not be given without prior consultation with the Finance Department. At this stage that department can scrutinize and advise on details which were probably not available at the Budget stage, it has also to see that funds allotted in the estimate for non-recurring expenditure are not employed so as to involve recurring expenditure that has not been foreseen.

(4) An important side of the last two branches of the department's work is that which relates to the public services. There are few greater dangers to a country than the unchallenged growth of the number of functionaries. And in particular there are few occasions on which an executive based on a popular assembly is more vulnerable than when it is pressed to add to the list of appointments paid from the public exchequer. A strong Finance Department is a powerful safeguard against these influences, and it should be definitely laid down by law that no public office should be created, or its emoluments determined, without prior consultation with

that department. This will at least ensure publicity, and of course it need not debar delegation of minor powers of appointment.

(5) A prominent duty of the Treasury in England and certain other countries is the control of the issues of money from the exchequer. The Auditor-General, however, in a note appended to this memorandum, considers that this system would be impracticable in India at present, and the Government of India accept his view.

(6) This renders it all the more imperative that the Finance Department should be in a position to check expenditure for which there is no Budget provision, or which is in excess of the Budget provision, whether it is covered by the appropriation of savings from a Budget grant or not. The information about any such irregularity will reach the Finance Department through the accounts and in the course of audit. But an obligation should also rest upon the executive authority concerned to give the department timely intimation, and the Government of India recommend the following rules:—

- (a) budgetted funds may not be transferred between minor heads of the same major head without prior consultation with the Finance Department;
- (b) funds may not be transferred between major heads without either the concurrence of the Finance Department or the approval of the authority which passed the Budget;
- (c) unless covered by transferred savings, no unbudgetted expenditure or expenditure in excess of the Budget provision for it may be incurred without either the concurrence of the Finance Department or the approval of the authority which passed the Budget.

The general effect of these rules will be to ensure that the intentions of the legislature are not seriously departed from without the knowledge of the Finance Department, which will be responsible for interpreting those intentions in a reasonable spirit. Convenience and common sense will suggest some pecuniary limits below which the rules will not operate. Above those limits, however, it will be the function of the

Finance Department either (i) to condone the unauthorized charges where it does not consider that they depart materially from the purposes of the Budget, or, (ii) where it regards the departure as serious, to report the matter to the legislature for its orders. A model set of detailed rules can be drawn up for the guidance of the provinces, but the main principles ought to be embodied in regulations under the constitutional law.

(7) Finally, the Finance Department must be in intimate relations with the Audit. It will have to advise the auditor regarding the scope and intentions of schemes of expenditure, having itself been apprised of these in its discussions with the executive authority at the preliminary stages. It will be consulted by the auditor about the detailed application of financial principles and the interpretation of financial rules. It will keep him informed about prices, local rates of labour, and many other facts which are relevant to his audit but of which he has no other source of knowledge.

#### V.—AUDIT IN THE PROVINCES.

28. This leads to the last topic in the memorandum, the manner of auditing the provincial accounts under the new system. Here, again, the work will be conducted on exactly the same principles for the reserved and for the transferred subjects. It will be carried out by the provincial Accountant-General acting as the Deputy of the Auditor-General, in complete independence of both the Governor in Council and the Ministers. The Government of India need not labour the supreme value of an efficient and independent audit. In relation to the revenue departments its duty will be to see that the methods of assessment accord with the law, and that the collections are prompt, impartial and business-like. In relation to expenditure, it will have regard to the financial regulations of the province, and also to the broad principles of legitimate public finance. It will not only see that there is code authority for all outlay, but also investigate the necessity for it. Was this item in furtherance of the scheme for which the Budget provided? Could the same result have been obtained otherwise with greater economy? Was the rate and scale of expenditure justified in the circumstances? If purchases were made, were they effected with due

publicity of tender, etc ? The Audit will constantly be asking such questions as these—in fact, every question that might be expected from an intelligent tax-payer bent on getting the best value for his money. At present the audit department generally is tied too much to formalities—the codes, and their cumbersome details, rather than their spirit. Until recently it very rarely challenged the wisdom of any public expenditure, or its economy, or its conformity with policy. It was usually content with proof that the money was actually spent on its declared purpose, and that there was proper formal authorization under the codes for its outlay. All this will have now to be replaced by a spirit of greater inquiry.

29. In dealing with audit reports, the procedure recommended by the Government of India is as follows. Each report will be submitted to the Governor, for communication to the executive authority concerned, whether Member of Council or Minister. Copies will simultaneously go to the provincial Finance Department and to the Auditor-General. The Finance Department will take orders upon the report. In the case of reserved subjects, the Governor in Council will dispose of the report and have power to condone surcharges and disallowances, except where they relate to definite infringements of orders of the Secretary of State or the Government of India. In the case of transferred subjects, Ministers will have an exactly corresponding position. But, in each case, the Finance Department will place the report and the orders upon it before the legislative authority which passed the Budget. As part of the constitutional scheme, that body should be expected to appoint a Public Accounts Committee, before whom would come all audit reports, and all cases of unauthorized expenditure and transfers which the Finance Department decides to submit to them. Cases where orders of the Government of India or of the Secretary of State have been infringed will be referred to those authorities respectively through the Auditor-General. Otherwise the legislature will have final power to condone or enforce any audit objection and to vary whatever executive orders may have been passed on it. But before the Public Accounts Committee the Finance Department will be the champion of the audit. It will bring all irregularities into the light of day, and will move the Committee to accord them full consideration and to deal adequately with the offenders. For this purpose it must have full right

of access to the Committee, and should be represented at every sitting held in connexion with the audit reports and the annual statement of excesses and re-appropriations. In this sketch of procedure there is, it will be understood, nothing that derogates from the right of an Accountant-General to bring financial irregularities immediately to the notice of his local Government, or of the auditor-General to bring to the notice of the Secretary of State any matter in which he considers the action of a local Government to have been perverse or contrary to public interests.

## AUDIT AND ACCOUNTS UNDER THE REFORM SCHEME.

[NOTE 1.—Throughout this memorandum whenever the word “Indian” is used in contradistinction to “Provincial,” it is adopted in place of the word “Imperial” in the technical sense in which that word is now employed in relation to Indian Finance.

NOTE 2.—In the brief preliminary explanation of the existing system, there is no reference to the arrangements for the audit and accounting of transactions of certain Indian Departments which are undertaken by departmental Accountants-General working directly under the Comptroller and Auditor-General, as these arrangements need not come under consideration in this connection.]

1. The unit of administration in India is the district, of which there are more than 200, and at the headquarters of each district is a Government treasury into which and from which all Government receipts and expenditure within the district, whether Indian or provincial, are paid. There is a strict demarcation in the treasury between the maintenance of the accounts and the receipt and issue of money. A gazetted officer, called the Treasury Officer, who is always a member of the Provincial Civil Service, is responsible to the Collector for all the work done at the treasury. The accounting work is supervised, under the Treasury Officer, by the Accountant and the monetary transactions by the Treasurer. The Treasury Officer is responsible for a rough verification of the accounts balance with the cash balance at the end of each day while the Collector is responsible for a strict verification of the cash balance at the end of the month and for a certificate as to the agreement of the cash and account balances. On the

11th day of each month the bills presented and paid during the first ten days are forwarded to the Account Office, while at the close of the month the remaining bills are forwarded with a cash account for the transactions of the month and also a report as to the cash balances. Except in Madras, the treasury staff make little attempt to classify under various heads of account the receipts and the payments at the treasury.

2. On arrival at the Accounts Office of the province, these documents pass into the hands of a district auditor, who is generally responsible for the audit and classification of all the transactions and for the posting of these transactions into the "district classified abstract," which is the first stage in the preparation of the final Government accounts. Some of the bills, the audit of which requires specialised knowledge, are sent to other audit sections. After audit these bills are returned to the district auditor for entry in the classified abstract. The classified abstracts on completion and check are sent to another section of the Account Office, in which the transactions are reposted so as to bring together under each head of account the transactions in each district, thus working up to a total of all the transactions within the province under each head of account.

3. It is important to notice at this stage that these accounts include both Indian and provincial transactions and that the working out of provincial balances apart from the Indian balances is solely a matter of accounting and is accompanied by no corresponding separate cash balance.

4. The head of the Account Office, called usually an Accountant-General, in addition to his work in connection with audit and account within the province, exercises other functions in respect of—

- (1) Budget work, and
- (2) Currency and resource.

5. At present the responsibility for the initial preparation of the provincial budget rests with the local Government, which forwards the budget to the Government of India for its acceptance.

Before framing the budget, the estimates, which have been prepared by various departmental heads, are nearly always sent to the Accountant-General for check and comment. These



comments are based mainly on a comparison of the anticipated expenditure with the expenditure under the same head in previous years, while the Accountant-General also brings to the notice of the local Government any entries in the estimate for which no sanction has yet been obtained. A revised estimate is prepared during the course of the year and the primary responsibility for advising the Government of India as to the receipts and expenditure that they may anticipate rests with the Accountant General and not with the local Government.

6. The natural comment in respect of the Accountant-General's budget work is that he is exercising a function which pertains properly to the Finance Department of the local Government or of the Government of India. The explanation of the existing arrangement is that the duties now performed by the Accountant-General necessitate constant reference to the latest available figures as regards the progress of receipts and expenditure and to the sanctions accorded by the various sanctioning authorities. The former are immediately available only in the Account Offices and in practice Account Offices work during the budget season at very high pressure so as to make these figures available up to the latest possible date. The transmission of these actuals to any other authority, to be utilised by them, would delay the preparation or the revision of the budget. Sanctions are also brought together more systematically in Account Offices than elsewhere.

7. The manner in which the Government of India administer the currency and resource operations of the country will be described, if necessary, in a separate note. For the purpose of this note, it is sufficient to explain that in every important province there is a Currency Office in which is kept the greater part of the Government cash balances. At every treasury, however, sufficient cash is retained in order to meet immediate demands, while the surplus receipts at most treasuries are set aside in separate receptacles as part of the currency balance of the country. A demand of a treasury for additional cash to meet anticipated expenditure is usually met by a transfer of money from the currency chest to the treasury against a corresponding transfer in the reverse direction at another currency chest. The officer responsible to the Government of India for these and all other

currency transactions throughout India is the Controller of Currency, but he acts through the Accountant-General, who issues detailed orders for the transactions within his own province. Thus the Accountant-General works under two masters. As regards accounts and budget he is responsible to the Government of India through the Comptroller-General, who is the head of the Department. As regards audit he is responsible to the Auditor-General, who is also the Comptroller-General. His work in connection with currency and resource is executed under the instructions of the Controller of Currency, who works under the Government of India in the Finance Department.

8. Expenditure on accounts and audit throughout India is an Indian charge (neglecting the cost of a small establishment in each province engaged in auditing the accounts of local bodies).

9. The officers in these Account Offices belong to the Indian Finance Department and, in view of the similarity of names, it may be desirable to explain the essential difference between this Department and the Finance Department of the Government of India. The latter is an integral portion of the Government of India itself—like the Home Department. The former is a service of officers performing financial duties throughout India and subject directly and solely to the authority of the Government of India in the Finance Department.

10. The Indian Finance Department is recruited—as to one-sixth of the appointments by the promotion of subordinates—and as to the remainder, by recruitment in England and in India in such manner as to ensure that one half of the vacancies are filled by Indians. In connection with the report of the Public Services Commission, the Government of India have recommended to the Secretary of State that hereafter two-thirds of the vacancies shall be filled by Indians. The officers of the Department are on a time-scale of pay, *viz.*, Rs. 300—50—1,250—<sup>50</sup>/<sub>2</sub>—1,500. Above that there are, in addition to posts reserved for Indian Civil Service, 9 appointments in Class I on a pay of ₹1,500—60—1,800, 3 appointments of Chief Auditors of Railways on ₹1,800 and ₹2,000 per mensem and 6 appointments of Accountants-General on ₹2,250, 2,500, and 2,750. All appointments to

the Department in India, all promotions to Class I and all appointments as Comptroller, Chief Auditor or Examiner, Military Works Services, are made by the Government of India in the Finance Department, while appointments as Accountants-General have to be approved by the Viceroy. In the same way the grant of leave to, and the transfer of, Accountants-General, Comptrollers, Chief Auditors, Examiner, Military Works Services, and officers of Class I, and any disciplinary action in respect of such officers, require the sanction of the Government of India. The Government of India also pass orders on the results of departmental examinations, grant extensions of service and sanction pensions. In all these matters the Comptroller-General exercises all the powers not expressly reserved, as indicated above, for the Government of India or the Viceroy.

In respect of other matters connected with the administration of the Department, the Comptroller-General has been vested with the powers of a Head of a Department under the Government of India. This gives him very little power to sanction permanent appointments, but a fairly free hand in sanctioning temporary appointments and miscellaneous expenditure generally.

11. The title of the head of the Department—Comptroller and Auditor-General—connotes his dual functions. As Comptroller-General he is the administrative head of the Department and is also responsible for the compilation of the accounts of India as a whole. In this capacity he is subordinate to the Government of India, while as Auditor-General he is responsible to the Secretary of State alone. On an audit question he can insist on a reference to the Secretary of State and his annual Audit and Appropriation Report has to be forwarded by the Government of India to that authority. To enhance his independence, the Comptroller and Auditor-General is appointed by the Secretary of State on the recommendation of the Viceroy and he is given to understand that he cannot ordinarily expect to receive any higher appointment under the Government of India.

12. When complete provincial autonomy has been attained, it may be assumed that the provincial Account Office will no longer be required to bring to account Indian transactions occurring within the province, and that the preli-

minary record of any Indian receipts or expenditure paid into, or from, a provincial treasury will be sent to an Indian Account Office either direct from the treasury or through the provincial Account Office, which will merely act as a post office. The provincial Account Office will then deal with nothing but provincial transactions and its cost can appropriately become a provincial charge and the officers serving therein can belong to a provincial service.

The provincial Auditor-General will then be the officer on whom the Legislature will depend for ascertaining whether the financial orders passed by them have been complied with and for bringing to their notice any violations of those orders. He must then be in a position of the utmost independence and his appointment should be on a statutory basis. He should be empowered to bring to light, in regard to public expenditure, violations not merely of rule but also of the canons of financial propriety. One may anticipate that the Legislature on receipt of his report will appoint from among themselves a committee to enquire into the irregularities brought to notice and to advise as to the action to be taken against the offenders and to prevent the perpetration of similar irregularities in future.

13. It is premature yet to foreshadow whether this officer should then continue to be the head of the Account Department. This must depend on the result of any changes which may be made in the near future in the position and functions of the Comptroller and Auditor-General, a question which is discussed later in this note.

14. This picture of the ultimate goal is presented as a guide in determining what progress it is possible to make at present towards that goal. In discussing this question due regard must be paid to the system and degree of Financial control to be introduced in the near future, a matter which is discussed in detail in another note. For the purpose of this discussion, it may be accepted that financial control, as exercised by the Finance Department of a provincial Government, will be for the present a reserved subject and will be one of the last of those subjects to be transferred. Financial control depends very largely upon an efficient system of audit and account and the handing over of the supervision of audit and accounts to the Ministers should be simultaneous with the transfer to them of financial control.

## REPORT OF THE FUNCTIONS COMMITTEE.

15. It does not necessarily follow, however, that it may not be possible before that date to set up separate agencies for the auditing and accounting of Indian and provincial transactions respectively. But the difficulties which would then arise must be weighed.

16. One practical difficulty will be that each Treasury Officer will come under the orders of two accounting officers in respect of Indian and provincial transactions respectively. Hereafter a recommendation will be made that Accountants-General shall no longer remain responsible for currency and resource operations, those duties being transferred to other officers working directly under the Controller of Currency. If that recommendation is accepted and given effect to, the position of the Treasury Officer in a district will then be as follows. In respect of resource operations, he will have to obey the orders of an officer subordinate to the Controller of Currency. In respect of audit and accounts he will have to obey the instructions of the Accountant-General. As a member of the provincial service, and also, in many cases, in respect of other branches of work allotted to him, he will be under the orders of the Collector. It will be a little difficult to require him, in respect of the audit and accounting of Indian transactions, to come under a fourth officer. This difficulty may not be insuperable, but at present it is undoubtedly serious. If ever the time comes when there is a State bank with a branch in each district responsible for all currency and resource operations in India, the difficulty arising from the multifarious duties of the Treasury Officer will be diminished. The time may even come when Treasury Officers will be chosen, not from the Provincial Civil Service, but from the Provincial Accounts Department.

17. A more serious difficulty will be the diminution of independence which will be the probable consequence of the substitution of numerous small audit departments for the existing Indian Finance Department, which now performs these duties of audit and account throughout India. The officers of the department number over two hundred. The traditions of the department, its numerical strength, its prestige as an Indian department, the constant transfers of the officers from one office to another throughout India, all contribute towards the honesty and independence for which the department has a high reputation. Prior to 1910, the auditing

and accounting of Public Works transactions were the duty of a separate Public Works Accounts Department, which formed a portion of the Public Works Department and worked under the orders of the Government of India in the Public Works Department. In that year that Accounts Department was amalgamated with the Indian Finance Department and one of the main reasons for the amalgamation was the feeling that officers of the Public Works Accounts Department, in the performance of their audit functions, were not so independent as the officers of the Indian Finance Department. There can be little doubt that the amalgamation has effected a considerable improvement in this respect. If the Indian Finance Department were split up into different cadres—one for each province—the number of officers working in each province would be very small, while, remaining for the whole of their service in the same province, they would be more subject to local influence and would lose that breadth of outlook which comes by transfer from one office to another.

18. The arguments in favour of an increase, rather than a diminution, in the near future of the independence and breadth of outlook of audit officers are overwhelming. On this point and on the relations between audit officers and a provincial Financial Secretariat in future I am in entire agreement with the views expressed in paragraphs 27 and 28 of the memorandum. The work of audit officers will inevitably increase in importance as the Reform Scheme comes into effect. In paragraph 260 of the report the authors state "on the other hand it should be made plain to them (*i.e.*, the Government of India) that, if certain functions have been seriously maladministered, it will be open to them with the sanction of the Secretary of State to retransfer subjects from the transferred to the reserved list, or to place restrictions for the future on the Ministers' powers in respect of certain transferred subjects." If ever such action has to be taken, its need will have been proved by the records of the local Finance Department in their relation with the Ministers and by serious financial irregularities, perpetrated in connection with transferred subjects, brought to light in the appropriation reports of the Auditor-General and of the local Accountants-General.

Moreover, it may reasonably be contemplated that one measure of financial control will be the creation of various Accounts Committees who will be entrusted by the various

legislatures with the duty of investigating financial irregularities brought to light in the various appropriation reports. It will then be the duty of the authors of those reports to appear before those Committees and explain to the members the facts of each case.

At first Ministers will be peculiarly susceptible to public opinion and should, therefore, welcome the maintenance of a strong and independent audit department, the existence of which will enable them to refute an accusation of financial impropriety in the exercise of their official duties. This argument will be all the stronger if the audit department regards itself as empowered to report not merely those cases in which definite rules have been violated, but also those cases which, though not contrary to any particular rule, yet contain elements of financial impropriety.

19. For all these reasons while the formation of separate provincial Account Offices must be regarded as eventually inevitable, I am strongly of opinion that the department should remain an Indian department as long as possible. There is no objection, however, to each province meeting that portion of the cost of the Civil Account Office of the province, which represents the share of the work done in that office in respect of provincial audit and accounts.

20. I am also of opinion that it will not be practicable to divest the existing Account Offices in each province of their responsibility for the audit and accounting of Indian transactions within the province until the number of transactions thus brought to account is considerably reduced, or until Local Governments become, to a smaller extent than at present, the agents of the Government of India in such matters.

21. It has already been urged that, when the Accountant-General in each province becomes an independent audit officer, his position should be regulated by statute. Meanwhile, for the same reasons, it is of even more importance that the final audit authority in India, *i.e.*, the Auditor-General, should also have his position fixed by statute.

22. It has already been explained that the Auditor-General and the Comptroller-General are one, and that, while the Comptroller-General as the administrative head of the Indian Finance Department is subordinate to the Government

of India, as the Auditor-General he is responsible to the Secretary of State alone. The manner in which he exercises his duties as Auditor-General needs explanation. He performs no independent audit work. All the audit is done by and under the supervision of various heads of Account Offices. The Auditor-General, however, has a staff of inspecting deputies, who examine, once every two years, the work done in each Audit Office and report thereon to the Auditor-General. He also receives copies of the appropriation reports, prepared by each Accountant-General in respect of provincial transactions, which are forwarded by them to local Governments for information. Outside these appropriation reports, the Auditor-General is also kept informed periodically by his officers of all important irregularities brought to light. From the information thus compiled throughout the year, the Auditor-General prepares his annual appropriation report in which he exhibits the result of the audit against the appropriations made in the budget—increased or diminished by fresh grants, withdrawals or reappropriations during the year—and also the more important financial irregularities detected by audit in the course of the year. This report is submitted to the Government of India, who have to forward it, as it stands, to the Secretary of State. At the same time the report is circulated to every local Government, which is under obligation to send to the Auditor-General any further explanation it may desire to offer in respect of any irregularity brought to light and to state the action, if any, which has been taken against the officer responsible for the irregularity. The Auditor-General may then call for any further explanation he desires and may state whether he considers the action taken adequate or the reverse. The Auditor-General is responsible for stating in each report how far he is satisfied with the explanations which have been offered by local Governments, or with the action taken by them, in respect of irregularities previously reported, and this opportunity of returning to the charge enables him to express with considerable force his views to local Governments in respect of any irregularity mentioned in his report. (It may be noted here that the local Government is not under any obligation to consider in detail the irregularities brought to light by the Accountant-General in the local appropriation report, though in practice most of them do so.)



## REPORT OF THE FUNCTIONS COMMITTEE.

23. It is now possible to consider whether any immediate alterations are desirable in the status and functions of the Comptroller and Auditor-General and in the duties imposed upon the heads of Account Offices. It is convenient to consider first the functions of the Comptroller and Auditor-General. It is of the utmost importance that an audit officer should be in as independent a position as possible. There cannot be complete independence of audit in India so long as the Accountants-General, who are responsible for the initial audit, are directly subordinate to the Government of India, seeing that some orders, which they have to apply in audit, are orders issued by the Secretary of State defining and limiting the powers of the Government of India. It is no answer to this argument to say that the supreme audit authority is vested in the Auditor-General, because the Accountant-General is responsible for framing his own conclusions as to the sanction required for any item of expenditure, and the intervention of the Auditor-General is secured only by way of appeal against his decisions. Again, it cannot be said that the Auditor-General is in complete independence so long as the position is that the officer, who as Auditor-General is supreme in audit matters, is, at the same time, subordinate as Comptroller-General to the Government of India in the administration of the department.

24. If the independence of the Auditor-General is to be enhanced, two alternative modifications of the existing arrangements may be considered. The first is to retain one officer with dual functions and to hand over to him complete control of the department, the Government of India in the Finance Department absolving themselves of all responsibility and authority in that matter.

25. The second alternative is to separate the two functions and to have a Comptroller-General who shall administer the whole department as at present but be relieved of final authority in audit matters that authority being vested in an Auditor-General with his own staff permanently working in the various Account Offices and checking on behalf of the Auditor-General the audit which has been undertaken therein.

26. I may mention that considerable thought has been devoted to the consideration of the question whether it will be possible to separate in Account Offices in India the audit

duties from the other duties performed therein. A change in procedure which would inevitably be the first change, if any such modifications were to be introduced, has been under trial in one provincial Account Office for the last 7 or 8 years. The results have been condemned by every Accountant-General who has watched it. I am convinced that such a separation is impracticable.

27. As regards the alternative proposals mentioned above, I prefer the former, inasmuch as the whole of the audit will then be performed by officers who are immediately responsible to the Auditor-General and to no other authority. Under the second proposal the actual audit will be performed by officers not subject in any way to the Auditor-General, who would obtain his information merely from a recheck of a small part of the audit. After mature consideration, I have come to the conclusion that in practice the existing arrangement, under which the audit officers are directly subordinate and responsible to the Comptroller and Auditor-General, even though it involves the subordination of that officer to two authorities, gives better results than could be anticipated from a system under which the actual audit is performed by officers not subordinate to the Auditor-General. It follows, therefore, that I recommend the adoption of the former alternative, *viz.*, the abolition of the control of the Government of India over the Indian Finance Department and the vesting in the Comptroller and Auditor-General of all the powers of the Government of India regarding the Department. I also consider that the Comptroller and Auditor-General should have powers of surcharge and of calling for papers.

28. I am bound to state, however, that since the creation in 1914 of the post of Comptroller and Auditor-General on its new basis the control of the Government of India over the Department has not reduced audit independence. My recommendation, therefore, is based on the theoretical desirability of audit independence and on the possibility, very remote it is admitted, of interference therewith if the existing system continue, rather than on any case in which audit independence has suffered.

29. As regards the functions of Accountants-General, I have already expressed the opinion that they should be relieved of duties connected with currency and resource work in res-

pect of which they come directly under another officer. The importance of the currency and resource work, which has to be undertaken by various Accountants-General, varies considerably, so that at any moment a situation may arise in which the Controller of Currency may desire the removal of an Accountant-General to a station where the currency work is less important, because he has shown himself unfit to perform the currency work in a province where such work is of considerable importance. The duty will then devolve on the Comptroller and Auditor-General as head of the Finance Department of recommending to the Government of India in the Finance Department the transfers which will be necessary in order to accede to the request of the Controller of Currency. The Comptroller and Auditor-General, in the interests of the account and audit work, may desire to leave that officer where he is or he may find it difficult to suggest arrangements which will satisfy both the Controller of Currency and himself. I wish it to be understood that these remarks are made purely from a theoretical standpoint. Since the separation of the functions of the Controller of Currency, I know of no case in which such a situation, as is apprehended above, has arisen between the Comptroller-General and the Controller of Currency, but existing arrangements render possible such conflict of opinion, and I think it is desirable that these duties should be separated if the separation can be effected without serious administrative difficulty, specially as many of the Accountants-General are at present seriously overworked. I do not think that it will be found difficult to make the separation.

30. The Accountant-General at present advises the Controller of Currency as to some of the figures to be adopted in his forecasts. Inasmuch as his advice is based on accounts figures this assistance must continue. I do not consider that the duty of advising other officers as to the figures to be adopted in budget or currency forecasts is any real infringement on his independence as an audit officer.

31. The manner in which the Auditor-General's reports should be dealt with in future is more a matter of financial control than of audit. It is sufficient to remark here that, until there is a separate Auditor-General for each province, any appropriation report, which may hereafter have to be submitted to a local Government or legislature, should be issued by the Auditor-General, even though it may have been pre-

pared for him by the provincial Accountant-General. In so far as such reports relate to "transferred" subjects it seems desirable that they should be considered by committees appointed by the legislature.

32. Every effort should be made to improve the efficiency of the audit and, as one measure to this end, I suggest that the rules contained in the existing codes, which have to be applied in audit, should be recast entirely. For nearly four years it has been my duty from time to time to ascertain the manner in which rules in these codes have originated and expanded and the growth of the accretions, by which the original rules have become overlaid with exceptions and explanations and even in many cases with principles incompatible with those which the original rules desired to express. As such cases come to notice, endeavours have been made to redraft individual rules, but I am convinced that the time has now come for this matter to be taken up systematically with the avowed intention of evolving as simple as possible a set of fundamental rules within which local Governments may be given large powers in the application of these principles to individual cases. It is desirable, however, to sound one note of warning. The Reform Scheme contemplates not merely devolution but also decentralisation, and any system of delegation of power involves the creation of a set of rules defining that power, which rules it will be the duty of the audit officer to apply. While, therefore, valuable work can be done in simplifying and harmonising the principles underlying the rules in various codes and in reducing those into a set of fundamental rules, it is inevitable that, subsidiary to those rules in each province, there will be a mass of other rules defining and limiting the power of subordinate authorities within each province. It is to be hoped that the experience of the Government of India will be a warning to the financial authorities in the provinces and an inducement to them to keep the subsidiary rules as few as possible.

33. It will also be the duty of the audit officers to relax their attention to details and to devote more and more of their time to a consideration of the manner in which the various executive officers are undertaking their more important financial responsibilities. There can be no advance in this direction, however, unless those authorities appreciate more clearly than they do at present, the position and duties of the audit officer.

## REPORT OF THE FUNCTIONS COMMITTEE.

Any scrutiny of, or enquiry as to, the manner in which executive officers are exercising the financial responsibilities entrusted to them by Government is often resented by such officers and an important part of the functions of any Finance Department, and an important feature of financial control, will be the duty of explaining to authorities incurring expenditure on behalf of Government the duty which is imposed upon audit officers to scrutinise the manner in which those duties are performed.

34 In conclusion, a few minor changes require comment.—

The existing accounts are very elaborate. The first great division is into —

- (i) revenue and service heads for the revenue and expenditure proper of Government, and
- (ii) debt and remittance heads for the receipts and payments incurred, in respect of which Government acts as a banker or remitter or borrower or lender, or which are merely in transit from one place or head of account to another.

The main unit of classification is the major head, of which there are about 34 under revenue, 51 under service and about 70 on each side of the account for debt and remittance. The major heads are sub-divided into minor heads of which there are 200 under revenue and nearly 300 under service and several hundreds under debt and remittance, and finally there are detailed heads which run into thousands. The existing arrangement is that, while the main structure of the accounts remains under the complete control of the Government of India, local Governments are given full power to vary the detailed heads. The final record of account in India is the volume entitled the Finance and Revenue Accounts which is presented to Parliament. It is an essential feature of the Reform Scheme that the Secretary of State and the Government of India reserve full right to call for information in any form they require and the main structure of the accounts will no doubt be decided by a request by the Secretary of State or the Government of India for the accounts to be submitted to them annually in a particular form. It may be anticipated that this form will not be in undue detail, and that within the form the local

Government will have full power to amplify or modify the details. They will also no doubt be able to recommend to the requesting authority either an amplification or modification of the form in which the information is called for. But until the form is modified by either authority, the form required will determine the structure of the accounts maintained by the Accounts Department. Inasmuch as accounts purport to be a statistical presentation of facts, any complete separation of provincial from Indian finance will necessarily be accompanied by a separation of provincial from Indian accounts. This will affect the whole structure of the accounts, but it is unnecessary to discuss at this stage the detailed consequential changes—a matter which can suitably be left over for future consideration.

35. Some of the general principles governing the classification of the accounts will require modification as the Reform Scheme develops. Thus at present the general rule is that inter-provincial adjustments are prohibited except with the concurrence of both Governments concerned. With the greater independence and isolation of provincial finances this rule will no doubt have to be reversed, inter-provincial adjustments being allowed unless both provinces agree to waive any adjustment in a particular case.

36. Another important fundamental principle is that "the classification in the public accounts has closer reference to the department in which the revenue or expenditure occurs than to the object of the revenue or expenditure or the grounds upon which it is sanctioned". As the separation between "reserved" and "transferred" subjects and between Indian and provincial expenditure becomes more and more complete, it will become more in accordance with facts to regard a department, which incurs expenditure on behalf of another, rather as an agent of that department than as a fellow servant of Government, both spending money from one fund. The modification of this rule, however, must be determined by the facts as they evolve and it is sufficient at present to note that this principle, simple and efficient though it has been in the past, may have to be gradually abandoned.

37. Any division of provincial subjects into "reserved" and "transferred" will accentuate the importance of the work of Account Offices in the classification of receipts and ex-

REPORT OF THE FUNCTIONS COMMITTEE.

penditure. At present the Accountant-General is enjoined to refer to the Comptroller-General all questions bearing on the classification of receipts and charges and other matters of account, such questions not being referred to the Government of India unless the Comptroller-General is in doubt or the local Government does not accept the Comptroller-General's view. In future the Governor will take the place of the Government of India as the final authority as regards the classification of a provincial receipt or expenditure as "reserved" or "transferred."

M. F. GAUNTLETT.

*10th December 1918.*

## **XII. Fourth Despatch of the Government of India on the Functions Committee's Report.**

TO  
THE RIGHT HONOURABLE EDWIN MONTAGU,

*His Majesty's Secretary of State for India.*

*Simla, April 16, 1919.*

SIR,

We have the honour to lay before you our views upon the enclosed report which was presented to us on March 10, 1919, by the committee appointed under the chairmanship of Lord Southborough, in accordance with the proposals made in para. 238 of the Report on Indian constitutional reforms, for the purpose of advising upon the demarcation of the field of provincial administration and the matters within that field which should be transferred to the control of ministers.

2. Some of the difficulties, which the committee necessarily encountered in fulfilling their task, were apparent to us at an early stage of the cold weather deliberations. The functions discharged by the Government in India cover vast areas of the life of the people, to an extent which the outside observer finds it difficult to appraise. They are in consequence so multifarious and diverse that it is far from easy to group them into categories on any scientific plan, for distribution among governmental authorities which will no longer be so closely inter-dependent as the existing organization. The work of government varies from those functions in which it is peculiarly identified with the special agency discharging it to those in which many departments or services are engaged, or in which, once the accepted policy has been embodied in legislation, effect is given to it by decisions of the courts of law. The committee's demarcation has accordingly been based upon a heterogeneous collection of functions, some of which differ widely in kind from others; but most of them, if not quite all, are clearly recognizable by the titles assigned to them. In pursuance of their instructions the committee have, in the first place, divided these functions broadly between all-India subjects and provincial subjects. In a few instances they have halved a particular subject between the central and the provincial Governments. In



other cases adopting the suggestion made in para. 238 of the Report they have declared a given subject provincial, "subject to legislation by the Government of India." They have then picked out from the provincial list the matters which they considered suitable for transfer, and have stated against each of these any special reservations which they recommend. In section II, part 2, of their report they have discussed the powers of control by the Government of India in relation to provincial subjects; and in section III, part 2, they have examined the powers which the Governor in Council should retain in relation to transferred subjects. In connection with the last matter they have inquired further what powers of control should remain with the Governor himself.

*General principles.*

3. During the course of the past few months we have on more than one occasion considered the effect upon the Government of India's responsibilities of the proposal to mark off certain subjects as provincial. The key to the position is, we think, to be found in the concluding portion of the formula in para. 189 of the Report, "This involves at once giving the provinces the largest measure of independence, legislative, administrative and financial, of the Government of India which is compatible with the due discharge by the latter of its own responsibilities." It thus becomes of importance to ascertain what the proper responsibilities of the Government of India in future will be. We accept as generally accurate the description and explanation of the central control hitherto exercised, which is given in paras. 117-119 of the Report. We take our stand firmly upon the cardinal proposition that no government in India can remain free on the one hand of control by Parliament and on the other of control by a legislature in India. In order to examine the sphere of those two distinct and in some degree exclusive methods of control, we have to relate them to the fundamental feature of our whole structure, the two halves of the future provincial Government.

4. It follows that that half of the provincial Government, which will in future consist of ministers responsible to the legislative councils, must in the largest measure possible be free from superior official control. Such control in their case

can be justified only by the necessity, touched upon in para. 12 of the despatch of March 5, of securing the paramount authority of Parliament, which will obviously include those matters for which under the scheme the Government of India will remain responsible to Parliament. It follows that some power of intervention must be provided in order to safeguard the subjects which will be retained directly in the Government of India's hands, and, in addition to these, such other matters as must continue to be regulated according to the wishes of Parliament. In para 11 of our memorandum of November 29, 1918, which forms Annexure II to the committee's report, we suggested that the exercise of the central Government's powers to intervene in transferred subjects should be specifically restricted to the following purposes:— (1) to safeguard the administration of the Government of India subjects, (2) to secure uniformity of legislation where such legislation is considered desirable in the interests of India or of more than one province, (3) to safeguard the public services and (4) to decide questions which affect more than one province; and we thought that the proposed restrictions should be effected by empowering the Secretary of State to make rules restricting to such specified grounds the control exercised by the central Government under section 45 over provincial Governments in the case of transferred subjects. The committee's proposal is stated in para. 17 of their report. In substance they accept the four grounds of intervention which we proposed; but by their method of treating the question of legislative control as a distinct matter, regarding which they make detailed proposals, and also by treating separately the questions affecting the public services, they have reduced the apparent number of the grounds of intervention from four to two. They also re-state the last ground of intervention in the list in such a way as to provide an opportunity for agreement between the two provinces concerned before the intervention of the Government of India takes effect. As we shall explain hereafter (para. 12 below) we prefer our own method of dealing with provincial legislation on transferred subjects to the alternative proposed by the committee. We have no hesitation in accepting all their remaining proposals; and we accept also the amendment which the committee propose for the purpose of giving effect to them in para. 22 of their report. We agree that the Governor-General in Council should be the sole

judge as to the applicability of the statutory rules in any given case, and we draw your attention to the emphasis which the committee lay on the need for making the rules subject to effective parliamentary control. We have only to add that if the Government of India are henceforth to intervene in transferred subjects only on specified grounds it seems to us inevitably to follow that the Secretary of State can only do so likewise. The delicacy of inviting Parliament to agree to set any bounds to the exercise of its authority was touched upon in para. 291 of the Report. It seems to us, however, that the statutory withdrawal of the Government of India's authority from transferred subjects, except on specified grounds, must be definitely recognized as exempting them except on the same aforesaid grounds from any responsibility in respect of such matters to the Secretary of State and Parliament. Transferred subjects in a word must henceforth be recognized as resting in the main upon a new source of power.

5. The position as regards reserved provincial subjects is more difficult; and before examining the committee's handling of it we may explain the conclusions to which our own investigations have led us. The provinces have in the past been administering some matters, as for example, customs and income-tax, in which the predominant interests of the Government of India are beyond question. They have also done much work on behalf of the Government of India in such matters as the railways and the post office. In respect of these functions we may conveniently describe the local Governments as acting in the capacity of agents of the Government of India. Beyond these matters, however, there has been a wide category of subjects in which no attempt has hitherto been made to measure either the interest or the inherent authority of the provincial Governments. In the case of some of them, such as the police and criminal justice, there is no denying the close interest inevitably felt by the central Government which is responsible for the security of India. In other cases, the need for maintaining India's external trade, or of securing uniformity in matters affecting the interests of commerce or industry between one part of India and another, has operated to give the central Government a close concern in certain other matters in the provinces. In other cases again the distribution of power between central and provincial Governments has rested mainly upon the criterion of convenience.

But the effect of section 45 of the Government of India Act, 1915, which enacts that "every local Government is under the superintendence, direction and control of the Governor-General in Council in all matters relating to the government of its province," has been to obscure whatever differences of kind can be traced in all these various cases, and it therefore becomes a matter of peculiar difficulty to define the measure of acknowledged authority which the official provincial Governments should in any specified case in future enjoy. In the past also the purely administrative control provided by section 45 has been reinforced by, or rather concealed behind, the close control over expenditure enforced by the various codes which resulted both from the system of divided heads of revenue and from the peculiar responsibility felt by the central Government and the Secretary of State for economy in administration. With the transfer of much of this responsibility most of these financial restraints will disappear, and the position will undoubtedly be easier, but in so far as they have been used to mask the administrative control their removal makes it only the more important to decide the principles on which administrative control should in future be exercised. We agree with the Committee that in this respect there should be a difference between what we may call agency subjects and all other subjects which are provincial without being also transferred. In respect of the former it clearly must be in the competence of the principal to vary or even to withdraw the authority delegated to his agent.

6. In the case of the remaining subjects the relevant considerations are more complicated. It is, in the first place, clearly desirable to give the provinces a greater field of action than they have enjoyed in the past. Nor would we be inclined to measure their enfranchisement by restricting it to "getting rid of interference in minor matters, which might very well be left to the decision of the authority which is most closely acquainted with the facts" (Report, para. 213). We think that more than this is required, if only to enable the official provincial Governments to move with reasonable freedom in relation to their legislatures. At the same time, however, we accept fully and without qualification the proposition that an official provincial government must remain amenable to the Government of India and the Secretary of State and Parliament in matters in respect of which it is not

amenable to its legislature. The scheme of provincial dyarchy to which we have declared our adherence in our despatch of March 5 does not contemplate that in reserved subjects the provincial Governments shall be amenable to their legislatures. On the contrary they are to remain responsible to Parliament for the good administration of such matters. Unquestionably, however, their administration of those subjects will in future be conducted under the eyes of a legislature which is more representative and will have further opportunities of advice and criticism than the legislative councils of the past have enjoyed. Although therefore we have proposed certain modifications of those features of the Report's scheme on which the committee's arguments rest, we nevertheless agree with them that while the control of the Government of India over subordinate official governments in reserved matters must remain legally unfettered, it is proper that it should in future be exercised with regard, among other factors, to the question how far the action of the local Government is in accordance with the wishes of its legislature. The assent of the legislature would of itself be no reason why the Government of India should allow a local Government's proposals to which it saw strong objection, nor would the dissent of the legislature in any reserved subject be of itself a reason why the Governor-General in Council should withhold his sanction to the provincial proposal, but in either case the attitude of the legislature would be one factor in the situation. We agree therefore to the committee's proposal to recognize it as such by a declaration of policy, enjoining the Government of India in the exercise of their future control of reserved subjects to have regard to the general purpose of the Act as declared in its preamble. It follows that we accept the proposals made in paras. 22 and 23 of the report; and we draw your attention and that of Parliament to the committee's remark at the conclusion of para. 23 that the declaration of policy which they there suggest will likewise affect the exercise of control by the Secretary of State on behalf of Parliament.

7. We agree entirely with the committee's remarks in para. 24. They here go to the root of this difficult problem of demarcation. The real difference of which we have to take account is between the matters which are to be handled by responsible ministers and those matters of which the official Governments amenable to Parliament will be in

charge. The process of transfer practically removes a subject from the direct cognizance of Parliament to that of an Indian legislature. The real dividing line is between transferred subjects on the one hand, and reserved and all-India subjects on the other. So long as a provincial subject is not transferred, the precise limitation of its boundaries is not a matter of great practical importance; but as soon as the subject becomes transferred and the Government of India's control can only be exercised for certain statutory purposes the question of definition acquires a wholly new importance. The labelling of a subject as provincial is to be regarded as a convenient means of giving effect to the policy of the Report rather than as the beginning of a federal system. In making their present proposals for provincial subjects the committee disclaim any intention of drawing the line which will be necessary, or of defining what protection will be required for the central authority, when reserved subjects are hereafter transferred. We agree that such definition can only be decided if and when the question of transfer arises.

8. With reference to para. 25 of the report we may explain that our proposal to rest the demarcation mainly upon budget heads was made before we were made aware of the committee's method of classifying subjects, or the explanation given in para. 24 of their report. It would in any case have been necessary, we think, to supplement the list of budget heads by some categorical interpretation of the second formula ("subjects which must be administered centrally") which occurs in the memorandum forming annexure III of the report; and for that purpose we are content, indeed we prefer, to rely on the committee's list.

9. As regards para. 26 of the report all we need now say is that the various departments of the Government of India will undertake to prepare the legislation needed to give effect to the policy of delegation of control. The material received from the local Governments and already collected from the departments should greatly facilitate the recension of the statute book; and we agree that the position will thereby be simplified and the new system will start upon a better footing. We propose to place an officer on special duty for the purpose and to initiate the necessary legislation at the earliest possible moment.

10. As regards the committee's proposals in para. 27 it

seems to us that, while instructions to the Governor are appropriate for the purpose of regulating his relations to the ministers and therefore of providing a means for giving effect to the Government of India's intervention in transferred subjects, there is no justification in the case of reserved subjects for laying the personal responsibility upon the Governor; nor would such a course be in keeping with our wish to maintain the corporate responsibility of the Governor and his Council. The proper course in our opinion would be for the Government of India to continue the existing procedure and to give orders in reserved subjects when necessary to the Governor in Council.

### PROVINCIAL LEGISLATION.

II. We come now to the proposals for the control of provincial legislation. The general aim of the committee has been to leave the provinces free to legislate, without previous sanction, upon the provincial subjects, whether reserved or transferred, except where these are specially made "subject to Indian legislation." At the same time they propose to retain most of the restrictions imposed by the existing sec. 79 (3) of the Act, to which they add three further provisions. These deal with cases where the proposed provincial Bill affects powers expressly reserved by law to the Governor General in Council, or amends any provision of certain All-India Acts included in a schedule which they suggest, or amends any clause of an Act passed by the Indian legislature which by the terms of the Act itself is similarly protected. Over and above these provisions the committee suggest that certain types of provincial legislation, though not subject to previous sanction, should be compulsorily reserved by the Governor for the assent of the Governor-General; and that in another class of cases it should be optional with the Governor to reserve provincial legislation for the same sanction. Finally they propose a category of matters not regarded as "subject to Indian legislation," in which the central legislature should nevertheless have power to legislate; it being open to it in doing so to prescribe that a provincial council shall not be competent to amend such a law without obtaining previous sanction. The committee have put forward a redraft of sec. 79 designed to give effect to their intentions, and have also thrown their

suggestions regarding reserved Bills and the procedure attendant on reservation into draft form.

12. We appreciate the aim of the committee to reduce so far as possible the categories of provincial legislation which will require previous sanction : but as you will have gathered from our despatch of March 22, 1919, and the memorandum therewith forwarded, we are anxious to see the procedure, which they suggest if possible simplified. In the first place we feel some doubt about the propriety of an arrangement, which makes certain provincial subjects "subject to Indian legislation." We take the broad view that administrative and legislative powers must really reside in the same authority, and that any such apparent diversity from this principle, as may be thought discernible in the Indian statute book, will be found on examination to be due to the fact that the administrative powers enjoyed by the authority which is not competent to legislate are really only delegated. So long as the entire administration of British India was held together in one whole by the provisions of sec. 45 of the Government of India Act, 1915, an arrangement by which definite powers were conferred by an Indian Act upon the provincial Governments involved no embarrassment. But with the change of system a new situation will be created, and the committee's proposal, which applies equally to reserved and transferred subjects, will in our judgment give rise to difficulty. So far as the reserved subjects are concerned we lay no special stress upon the point, because, as the committee themselves recognize in para. 24 of their report, the Government of India's control will in these cases remain unrestricted to any special purposes. We are prepared, therefore, to accept their solution, which at all events serves to bring out clearly the ultimate dependence of the provincial Governments in their official aspect upon superior authority. But in application to transferred subjects we cannot think it a suitable arrangement. A technical argument might be based on the first head-note to the All-India list, read in conjunction with para. 17 of the committee's report, to the effect that the Government of India would have an uncontrolled right of directing the administration of any transferred subject in respect of which there was an Act upon the Indian statute book. That is a position which we have no wish to adopt. But what we do feel is that the committee's proposal is inconsistent with the measure of definite respon-



sibility which it is our aim to give to ministers. We do not think that ministers will feel themselves fully seized of matters in respect of which they cannot without superior sanction secure legislation; nor do we like an arrangement which throws the main responsibility on the Government of India for legislating for certain matters in the provinces, while the execution of their policy is in the hands of agents whom they cannot appropriately control. Our own purpose was to limit the intervention of the central legislature to clear cases of necessity. We do not share the committee's fear that our proposed power of legislating in the interests of essential uniformity will impede the growth of a convention of non-interference. On the contrary our desire to establish such convention will tend to make us strictly watchful against any unnecessary uniformity of treatment. We regard the committee's proposal to subject to Indian legislation certain matters in the transferred list as clearly going beyond what the requirements of uniformity would justify. We recommend therefore that in the case of all the transferred subjects the provision "subject to Indian legislation" should be omitted: and that as is proposed in para. 212 of the Report, the right should be recognized of the Indian legislature to legislate for any provincial matter in respect of which uniformity of legislation is desirable. This modification will make it possible to simplify the committee's scheme of legislation in other respects as well.

13. Our second change has reference to the schedule of Acts which the committee propose to attach to sub-clause (*j*) of their draft. We are not sure upon what principle this has been compiled. It comprises the chief codes, and the chief laws relating to business and property, assurance, interpretation, provident funds, ports and lunatics. With a certain reservation in the case of ports, it may be said that all these are All-India matters, the regulation of which by a provincial legislature is already subjected to previous sanction by the terms of the committee's proposed sub-clause (*h*). We feel no doubt, however, that the intention of their sub-clause (*j*) is to afford a higher measure of protection to the scheduled Acts than would be provided by the more general terms of their sub-clause (*h*). Our difficulty rather is that we cannot find any sure ground on which to discriminate the treatment of the Acts proposed for inclusion in the schedule from many

others which merit equal protection. Several important Acts forming parts of the criminal law of the country are not mentioned ; and there are many others which occur to us in connection with the law of status and civil rights, property, business and commerce, which equally ought to be maintained upon a uniform basis. While therefore we agree with the committee's idea of defending a definite field of All-India legislation from alteration by the provincial legislatures without previous sanction, we are not prepared to accept their proposed schedule as limiting the field ; and as will be apparent to you from sub-clause (i) which we have included in the redraft of sec. 79, appended to our second despatch, we should prefer to define the Indian Acts in question by rules to be made by the Governor-General in Council.

14 We take the same view of the committee's proposals for the reservation of Bills (paras. 36-38) as we have already expressed concerning the proposals discussed in para. 12. We agree with their purpose and appreciate the advantages of restricting the cases where previous sanction will be required to provincial legislation, but we cannot help thinking that their end can be attained by simpler means. We have examined this question further since our despatch of March 22, 1919, was written. We see no need, in the first place, for a two-fold category of reservation powers. The effect of compulsory reservation (whether prescribed in the statute itself as the committee suggest, or by rule as we were provisionally disposed to think) would be to transfer the power of assent in the cases specified from the Governor's hands to those of the Governor-General. We note indeed that the committee suggest that the Governor-General should have power to direct the Governor not to reserve a Bill ; but (to waive the question whether this extension of the personal powers of the Governor-General would be expedient) we do not understand how the Governor-General would be in a position to give such a direction until the Bill was before him, and we think that the provision for it would be largely inoperative. We do not think that the Governor's powers either need or should be circumscribed as the committee suggest. As we shall show you in due course (*vide* paras. 19, 58 and 108, and 30 below) our proposals for dealing with three, *viz.*, (a), (b) and (d) out of the four categories of cases in which the committee recommend compulsory reservation are rather

different from the committee's, and go far to obviate the need for their proposed procedure. Their fourth category is that of a Bill which "contains provisions which have the effect of including within a transferred subject matters belonging to reserved subjects" [para. 36 (3) (c) of the report]. The committee have not explained this proposal otherwise than by their reference in para. 37 to "Bills which shift the boundaries between reserved and transferred subjects." We recognize that as a matter of administrative convenience, quite apart from any question of political development, some re-adjustment of boundaries may from time to time be necessary, but inasmuch as dyarchy has its basis in the statutory orders of the Secretary of State, we do not regard provincial legislation as the appropriate means of effecting such adjustments. To employ such means would certainly invite the agitation for a re-drawing of the frontier, which we strongly deprecated in para. 111 of our despatch of March 5, 1919.

15. These reasons lead us to conclude that no compulsory process of reservation is necessary. It will suffice we think to provide, as proposed in para. 23 of the memorandum attached to our despatch of March 22, 1919, that the Governor shall have a discretionary power of reserving provincial Bills for the assent of the Governor-General and to provide for the guidance of the Governor in the exercise of this power by the instrument of instructions. We have made provision accordingly in the draft of the instructions which we attach to this despatch.

16. As the committee point out, there arises the further question of the procedure which will follow upon the reservation of a provincial Bill. They suggest that if the Governor-General so directs, but not otherwise, the Governor should have power to return the Bill for reconsideration of specified amendments. We need not go into the question whether the proposed power of direction should reside with the Governor-General or with the Governor-General in Council because, as already intimated in para. 84 of our first despatch, we agree with the view taken in para. 254 of the Report on constitutional reforms that the Governor should have this power of returning a Bill for reconsideration of particular provisions in it, irrespective of any question of first reserving it for the orders of higher authority. We think that if the Bill is returned as a result of reservation, it should be by the personal

orders of the Governor-General. There would thus be a double power of recommitment, at first hand by the Governor and in the event of reservation by the Governor-General. But inasmuch as recommitment by the Governor-General may obviate the use of the veto, we think that he should have power to recommit any provincial Bill irrespective of its reservation by the Governor. We agree that when a Bill is returned for reconsideration, the ensuing procedure should, with such changes as are necessitated by the foregoing remarks, follow the lines suggested by the committee. We doubt whether the procedure would be set forth *in extenso* in the statute, but we suggest that clause 7 (1) of the Bill should be enlarged so as to provide the necessary rule-making powers.

17. The effect of the modifications which we advise in the committee's treatment of the question of provincial legislation will be to reduce their proposed four categories of provincial Bills (para. 39) to three. Over and above these, however, the committee have propounded two further species of provincial legislation. In para. 40 they advise that legislation on such matters as the diseases of men, animals and plants and the destruction of pests should be shared between the central and provincial legislatures. In their list of provincial subjects the committee record against the items no. 3—public health, sanitation and vital statistics, no. 9, agriculture, and no. 10, civil veterinary department (which reappear as nos. 3, 6 and 7 in their transferred list) a remark to the effect that the Indian legislature should have concurrent powers of legislation for the purpose referred to, although the matters defined in the items are not themselves made subject to Indian legislation. The committee advise that the Indian legislature should if it sees fit include in its legislation on such matters a provision debarring the provincial legislature from amending its Acts without previous sanction; in which event the effect is the same as if the portion of the field covered by the Indian Act had been declared subject to Indian legislation. It seems to us that this indeterminate treatment of the question introduces a complication which the circumstances hardly justify. It is true that the existing code of defensive laws upon such subjects will need amplification and amendment as the people of India come to appreciate more keenly the advantages of prophylactic science. But we question whether there will be much opportunity for isolated action by individual provinces.

The case is clearly one in which the need for defending uninfected areas from the invasion of diseases or pests would justify the exercise of the Government of India's concurrent powers of legislation to secure concerted protective action. We think it sufficient therefore to rely on the powers which the authors of the Report (para. 212) proposed to reserve to them for such a purpose, and to secure any Indian legislation so passed against being impaired by the provincial councils either by the terms of the law itself or by prescribing it in the rules proposed in para 13 of this despatch. This arrangement would still give the provinces an opportunity of supplementing the general legislation and of experimenting in particular directions if their peculiar circumstances so required. We therefore do not think it necessary or advisable to adopt the method proposed in para. 40 of the report.

18. Finally the committee adopt the suggestion made in para. 212 of the Report that the provinces should be empowered to adopt Indian legislation either as it stands or with modifications. The proposal of course relates to provincial subjects only. We see no substantial value in this arrangement. As you are aware, it is at present open to the Indian legislature to enact a general law which can come into operation in a particular area only on being notified as in force there by the local Government; and so long as a province desires no modifications in the legislation which it wishes to apply that is clearly the simplest course to follow. On the other hand if the province desires to modify for its own purposes the text of an exemplar Act passed by the central legislature, it clearly must legislate to do so; and if the provincial legislature is to legislate, then it should do so *ab initio* without the central legislature first setting it an example, which in any material respect the provincial Governments or legislatures might disregard. If a provincial legislature seeks to mould its law upon a model supplied to it from outside, it would always be open to the Government of India to assist the provincial Government with their advice, without going through the sterile process of first legislating themselves. We do not therefore advocate the proposals made in para. 41 of the report.

19. It remains for us to annotate our own redraft of sec. 79 of the Act. The changes in sub-sections (1) and (2) are consequential on clause (1) of the Bill. Clause (a) of sub-

## THE INDIAN CONSTITUTION.

section (3) is explained by para. 62 of our first despatch. Clauses (b), (c) and (d) need no comment. Clause (e) gathers up in one comprehensive clause the matters now covered by clauses (b), (c), (d) and (g) of the existing sub-section (3) and also the committee's draft clause (h). Clause (g) is the committee's clause (i) : clause (j) the committee's clause (l). Clause (h) represents our considered conclusion upon the difficult question of legislation affecting religious rites and usages. We need not here refer to the lengthy correspondence which has passed upon the subject. The committee's proposals for dealing with it will be gathered from paras. 15 (4) and 36 (3) (a) of their report. Our aim is much the same as theirs, namely to give the provinces a greater liberty of action in redressing the abuses which often attend the administration of charitable and religious trusts, but the restriction imposed by the existing section 79 (3) (e) of the Act is much wider in its scope than the provisions by which they propose to replace it. We have to bear in mind that much of the personal law of India is a law of status which the individual carries with him irrespective of locality. For this reason we seek to retain the previous sanction of the Governor-General to any changes affecting the fundamental principles of Hindu or Muhammadan law, while leaving the provinces free to seek such legislative solution as they choose for the difficulties of trust administration which have been acutely felt in practice. This statement of our intentions is, however, subject to what we say in para. 65 below regarding our purpose of legislating without delay in order to secure certain principles of trust management, while leaving the settlement of details to provincial Governments. As regards our draft of sub-clause (i) we would refer you to para. 13 above. Since our despatch of March 22, was written we have re-examined the language of our redraft of the section. It appears possible that an argument in favour of the extension of the powers of the provincial legislatures might be based on the use of the word "regulating" in clauses (e) and (f). A provincial Bill which materially affected the administration of an All-India subject might for example be put forward without previous sanction on the ground that the scope of the measure was not wide enough to amount to the "regulation" of the particular subject. We advise therefore that the phraseology of clauses (e) and (f) be assimilated to that of clauses (b), (c), (d), (g) and (h) of the sub-section.

20. Two more points present themselves before we leave this question of provincial legislation. We have already expressed our concurrence with the committee's view that the powers of the Government of India to control the administration of the reserved subjects, however the exercise of such powers in future is relaxed or modified, must remain legally unfettered, if Parliament still acknowledges, and requires the Government of India to discharge, a responsibility for the general well-being of the country. As you are aware, our administration has in the past been based to a great extent upon a number of well-defined principles, some of them laid down by eminent predecessors of your own, others evolved in the course of long administrative experience in India. Some of them, such as the principles of non-interference by the State in religious issues, or of non-interference with through trade by transit duties, are so well-established that any attempt to interfere with them would perhaps command little or no general assent in India. But there are others, which, however cardinal to our ideas of government, are not regarded by Indian opinion as equally axiomatic. The best illustration that occurs to us are the principles evolved over a long period of years as a result of the labours of many distinguished men, on which the land revenue assessment in temporarily settled provinces is administered. It has come to be regarded as settled policy that in justice to its subjects at large the State ought not to forego its share in the unearned increment of the land as it would do if settlements of land revenue were to be made permanent: indeed the ordinary duration of a revenue settlement has come to be fixed at the life of one generation. On the other hand, out of consideration for the persons most directly affected by a new settlement, it is equally well established that the enhancement of the land revenue should not normally exceed a certain fixed percentage. There is indeed a growing tendency to require that this limitation, as well as the processes by which the amount of the assessment is arrived at, should be embodied in the law and made the subject of adjudication by the courts. It is not our present purpose to discuss the reasons for and against such a change; but we are bound to ask ourselves whether it is possible or expedient to take steps to prevent what we may describe as established principles of administration being defeated by provincial legislation. We have no desire to subject such legislation to

any kind of superior executive sanction : and we recognize that there is the certificate power in reserved subjects and in any case the veto. But we have to bear in mind that Governors accepting office under the new conditions may feel some doubt whether what has hitherto been regarded as settled policy should not give way to the expressed desire of a mainly elective legislature to order things in future otherwise ; and we feel that it is highly desirable if possible to avoid a situation in which the Government of India are called upon to prevent by the use of the Governor-General's veto a mistaken policy expressed in provincial legislation to which the Governor has already assented. The only solution we think is to embody in the instructions to the Governor a direction that in considering whether projected legislation on reserved subjects injuriously affects his responsibility for them, he must pay regard to any general principles laid down for their administration by the Government of India or the Secretary of State. At the same time we recognize it as our duty to subject those principles to the strictest scrutiny from the point of view of devolution, and to retain for the guidance of Governors only those which are of vital importance to good administration, so that local Governments may not be fettered by minor precepts of efficiency.

21. In the second place even if the proposed scheme of provincial legislation is simplified as we suggest, it will still be relatively intricate compared with the present arrangements. It is desirable to minimise the chances that when a measure has passed the provincial legislature the Governor-General may still feel bound to veto it, not merely on the technical ground that his previous sanction was not obtained, but for the more substantial reason that it runs counter to some All-India interest in a manner which cannot be allowed and which would have been pointed out if previous sanction had been sought. There should, in our view, be some means of ensuring as far as possible that before legislation is undertaken in the provincial council the requirements of the Statute and the rules made under it have been fulfilled. We have already said that we cannot contemplate any form of previous executive sanction. The only alternative is to require that before a Bill is considered by a provincial council it shall be specially scrutinised to see that it is within the competence of the council. We think that this duty should be laid upon



the secretary to the council, who under the new arrangements should be an officer qualified to undertake it. Para. 116 of the reforms Report pointed out how largely the practice of referring Bills for executive sanction had contributed to the maintenance of the present standard of drafting in legislation throughout India: and in the conditions of litigation in this country it is extremely desirable that the standard should be maintained. We think it likely therefore that the new conditions of legislation in India may render it very desirable to set up some kind of central drafting office, not under the orders of the Government of India, which all local Governments would co-operate in maintaining to advise upon the drafting of provincial Bills. But we do not think that the certification of provincial Bills as within the competence of a provincial legislature can properly be made the function of such a drafting office even if it is created.

#### DIVISION OF SUBJECTS.

22. Before we examine in detail the committee's distribution of subjects between All-India and provincial, we should like to state our views upon a few general points on which the committee have not touched, though some of the items which they enumerate to a certain extent involve them. The first is the question of information, which the committee mention in connection with the question of census and statistics. We should prefer to dissociate it from any particular item and to treat the matter as one of the fundamental conditions of a dyarchic system. We have pointed out (para. 12 of our first despatch) that such a system can endure only so long as it is safeguarded by Parliament, which must therefore be in a position to obtain any information which it requires whether on a transferred or a reserved subject. The authors of the reforms Report (para. 291) took the same view. But over and above this requirement it seems clear that the Government of India must have an unfettered right to obtain at any time and in such form as they require any information about the provincial administration, if they are to safeguard their own subjects, direct the administration of the reserved subjects, guide the Governor in his relations with ministers, maintain the public services on their present lines, and ensure that sufficient material is forthcoming for the statutory

commission. We do not of course intend that the information so obtained shall be used for the purpose of executive interference to any further extent than the principles which we have accepted require and we have already (para. 4) made it clear that in transferred subjects such intervention will be statutorily circumscribed. Our intention is that the Government of India shall be in a position to express their views freely and with full knowledge upon provincial administration, to advise where necessary, to rely for the enforcement of their view mainly upon public opinion and the strength of their case, and to interfere only in accordance with the principles and in the circumstances which we have already defined.

23. Connected closely with this last matter is the question of inspection and technical advice. The existing system of administration involves, as you know, the maintenance at the headquarters of the central Government of a number of inspecting or consulting officers whose advice, particularly on the technical side of the administration, has in the past been of the greatest value both to the Governor-General in Council and to local Governments. With very limited exceptions these officers have had no executive authority over departmental work in the provinces. They have inspected provincial departments and advised the Government of India upon the results, and whatever decisions the Government of India have come to as a result of their advice have been communicated by that Government in orders to the local Government. We feel no doubt that this body of consultant and inspecting officers will be required in future, though the topics with which they are concerned are provincialized or even transferred. So far as the All-India and the reserved subjects go, no doubt arises. Whatever change ensues in their functions, it is clearly necessary to retain, for instance, the Director of Central Intelligence, the Director General of the Indian Medical Service, the Inspector General of Irrigation and the Director General of Archaeology. We feel no doubt that the services of the Educational Commissioner, the Sanitary Commissioner, the Agricultural Adviser and others will be no less necessary, even if the corresponding departments in the provinces are in whole or part transferred to ministers. Coming changes will no doubt affect profoundly the activities of the Government of India departments, and their consequences in this respect can only be seen after some

experience of the new arrangements. It would be premature to attempt to forecast them. But without seeking here and now to decide exactly what staff will be required for the purpose of transferred subjects at the headquarters of the central Government we wish to make it clear that some such staff will certainly be needed. The function of these officers would be to inspect the operations of the transferred departments in the provinces, and to report their conclusions to the Governor and Ministers as well as to the Government of India, and to produce as at present periodical reports which would be available to the general public. If they had occasion to criticise, their views would be expressed with due recognition of the extent to which provincial policy, however different from the policy previously pursued, enjoyed the support of public opinion in the province. They would in short report in the character of professional consultants and not in that of official supervisors. We do not propose that in the event of intermediate action appearing necessary upon their reports the Government of India should issue any official directions to the local Government. They would generally rely as we have said upon the fact of publicity and public criticism : but in extreme cases where remedial action was called for we think that they should call the attention of the Governor to the defects disclosed, and invite him to use his influence and authority with ministers to secure their removal.

24. The matter of scientific research again is closely associated with the questions of inspection and advice. This is an important element in the medical, sanitary, agricultural, forest and civil veterinary departments and it will figure largely in the activities of the proposed industrial department. On the educational side it has its counterpart in the central Bureau of Education. The committee have proposed to treat "central institutions of scientific and industrial research" as an All-India matter : and in these should be included, we consider, not merely the medical and bacteriological laboratories, but the Research Institute at Pusa, the Bacteriological Laboratory at Mukhtesar and the Forest Research Institute at Dehra Dun. In all these cases there is room for a great expansion of scientific research, and central institutions are needed for the double purpose of assisting and co-ordinating the work of provincial officers, and of undertaking investigations which are beyond their scope. None of the provinces

is at present in a position to undertake all the research required for local purposes ; and while it is desirable that the major provinces should be encouraged to equip themselves better in this respect, we think that central institutions will always be required to deal with the wider problems. At this point the question presents itself whether the Government of India, keeping in their own hands the direction of such central institutes of scientific research, should intervene in provincial research for the purpose of preventing overlapping or the dissipation of effort on infructuous inquiries. We do not propose that provincial research should be hampered by any direct control. Scientific inquiry, if it is to be real and fruitful, must be left as free as possible. We think, therefore, that the results of the central institutes' research should be freely available to provincial departments, and may be safely left to carry their own commendation with them. It may be anticipated that the central institutes will for some time to come enjoy the best equipment and the most skilled staff : their work should prove itself : and if any provincial department persisted in disregarding the results which were made available to it, we imagine that the consequences in the shape of waste of time and money would be brought home to it if not by public opinion at least by the statutory commission. We may add that cognate problems, tempered however by the powerful factor of commercial production, present themselves also on the industrial side : but it will be more convenient to deal with that very important topic as a whole in connexion with para. 45 (3) of the committee's report.

25. We come now to the proposed division between All-India and provincial subjects. The committee's remarks upon this point in the third sentence of para. 13 of their report call for some amplification. Every department of the Government of India laid before them a detailed memorandum showing its own relations with the provinces, the nature of the control exercised and the reasons therefor : and we offered our Secretaries and Departmental Officers as witnesses to the committee in case they desired to elucidate further the information so supplied. It was out of the question for the Government of India, without knowing what principles of demarcation the committee contemplated, or the nature of the evidence which they had received in the provinces, to work out an entire scheme : our intention was first to settle

principles with the committee, and thereafter to confer with them upon their application to details. The pressure of time alone made it impossible to adhere to this intention : the committee took no secretariat evidence on their return to Delhi and no conferences were held. It must not be deduced from the committee's condensed account of what occurred, that the Government of India neglected their own part in the inquiry or allowed an undue burden to be thrown upon the committee. The fact is that the inquiry had perforce to be conducted under stringent time limits, and we believe that everyone concerned did their best in the circumstances.

26. One more point requires notice. The committee would be the last to claim that their enumeration and definition of subject heads has scientific precision ; and whatever time and care were to be expended on refining it, the possibility of overlapping, uncertainty or omissions must remain. There must therefore in any case be authority to determine on which side of the line a given topic falls. If it is a question between All-India and provincial subjects, such power must reside with the Governor-General in Council : and with the Governor personally if it is a question between reserved and transferred matters.

#### ALL-INDIA SUBJECTS.

27. The committee's All-India list appears to us to be generally suitable ; but we desire to suggest certain amendments of varying importance in the list as it stands, and to recommend the addition to it of certain matters which appear to us to be clearly of an All-India nature, and of sufficient importance to justify their inclusion.

28. *Item 1.*—This should we think be expanded so as to include matters connected with the defence of India, such as ordnance, munitions, censorship, prize courts, etc., which are not covered by the committee's enunciation of personnel and works. We recommend the following redraft :—

"All questions connected with His Majesty's naval, military, and air forces in India, including the Royal Indian Marine, volunteers, cadets and armed forces, other than military and armed police maintained by provincial Governments"

"I.-A. Ordnance, munitions, censorship, compulsory purchases, requisitioning, prize courts, registration of mechanical transport, etc., for naval or military purposes."

29. *Item 5*.—We doubt if all excluded areas should be made an All-India subject but shall make a recommendation after further examination of the treatment necessary for them (*vide* para. 84 below).

30. *Item 6 (a)*.—We agree with the committee that, though railways are essentially an All-India subject, provincial governments may well be given a larger voice in the construction and working of light and feeder railways within their jurisdiction. But the specific proposal to adopt the British parliamentary procedure in the case of light or feeder railways does not commend itself to us. Methods that have arisen out of the special conditions in England would not be suitable in India. Legislation is ordinarily unnecessary for the purpose in view and to have recourse to it would be dilatory and expensive. It involves a marked departure from Indian methods of business that a department of the Government of India acting under the orders of that Government should appear as a party to plead its case against the promoters of a private line before a select committee of the provincial legislature with a majority of non-official members. It would still be necessary to reserve control over such projects by means of the veto, and we are opposed to giving an unreal appearance of discretion to the provincial councils. The Railway Board whose opinion we attach, are opposed to the suggestion. We think that the simpler course will be to confine *item 6 (a)* of the All-India subjects to

"Railways and tramways, except (i) tramways within municipal areas, and (ii) light and feeder railways and tramways."

We should then leave those two exceptions as provincial subjects, the former transferred and the latter reserved, subject to such general principles as the Governor-General in Council may prescribe and we should alter *item 5 (d)* of the provincial list accordingly. The legislature of a province would deal with Bills for light and feeder lines in the same way as other legislation: but there should in our opinion be a standing order requiring at least two months' notice of a motion for leave to introduce a Bill on this subject, in order that the

## DESPATCH ON FUNCTIONS COMMITTEE'S REPORT

Railway Board may have an opportunity of advising the local Government regarding it in time.

31. *Item 6 (b).*—The alternative course to that proposed by the committee would be to rely on the well-recognized obligation of local Governments to maintain all arterial communications in a proper state of efficiency. But in view of the proposed transfer of the subject of communications to ministers that arrangement might entail inspection of roads of military importance by the Department of Military Works, an arrangement which would be more likely to engender friction. We therefore accept the committee's proposal. The subsidiary question whether this should entail any transference of charges will be examined subsequently. As it stands, however, *item 6 (b)* is not regarded as sufficiently comprehensive. We advise that it be redrafted as follows :—

“6 (b). Such roads, bridges, ferries, tunnels, ropeways, causeways, and other means of communication as are declared by the Governor-General in Council to be of military importance.”

32. *Item 6 (c).*—This should in our opinion be amplified as follows :—

“Air-craft, air-craft factories, aerodromes and landing places.”

33. In *items 6 (d), 10, and 20* occurs the phrase “declared by or under Indian legislation.” In the case of inland waterways, the committee's intention is that such legislation should define the extent to which they are an All-India subject ; in the case of ports it should declare those ports which are to be regarded as major ports and therefore an All-India subject ; and in the case of the production, supply and distribution of certain articles, it should lay down the articles of which control by a central authority is regarded as essential in the public interests. In all these cases we accept the main purpose of the committee, which is to draw the line between central and provincial business ; but we see no reason to undertake legislation in order to give effect to it. Rules framed by the Secretary of State will fix the classification of subjects as all-India or provincial, and power should be given to the Governor-General in Council under these rules to define the extent to which inland waterways shall be All-Indian, to declare the

major ports, and to notify the articles which are to come within the scope of *item 20*. To require legislation in these cases would not only be inconvenient and productive of serious delays, but would also impose on the Indian legislature a function which has never belonged to it and which it is not well qualified to discharge. We may take this opportunity of specifying the ports which we propose that the Governor-General in Council should declare to be major ports. We think that Calcutta, Bombay, Karachi, Aden, Rangoon and Madras should be declared to be major ports and that for special reasons Chittagong and Vizagapatam should also be so treated. Tuticorin would then be the largest of the minor ports, and it is quite possible that either there or at Cochin there may be such development as to require that they also should hereafter be treated as major.

34. *Item 8* should be amplified to read as follows :—

“Lightships, beacons, buoys, and lighthouses (including their approaches).”

35. In *item 11* we would add after the word “telephones” the words “and wireless installations.” In *item 12* we would substitute “taxes on income” for income-tax.” The term income-tax has a restricted meaning, and it should be made clear that the central Government of India will reserve for itself not only the existing tax known as income-tax but all taxes on income. The excess profits duty, for example, which has recently been introduced would not be covered by the entry in the committee’s list, but it clearly should be classified as an All-India subject.

36. It is not clear what articles the committee had in mind when they framed their definition of *item 20*. We understand that this entry was not intended to cover the case of munitions, which would come under *item 1* ; nor yet stores (though these have not been separately provided for), but was meant to embrace such articles as cinchona, the production of which the Government of India now contemplate taking under their sole charge. We would accept the entry with the amendment suggested in para. 33 above, but would divide it into two parts as follows :—

20. Control of production, supply, and distribution of any articles, in respect of which control by a central authority is declared by the Governor-General in Council essential in the public interests.



DESPATCH ON FUNCTIONS COMMITTEE'S REPORT.

20-A. Control of cultivation and manufacture of opium and sales of opium for export.

37. *Item 28* requires some modification in regard to railway police. The position of the railway police differs from that of the ordinary civil police in only two important respects. The first difference is that owing to the fact that railway administrations are not co-terminous with provinces it is in many cases convenient to give the railway police of one province jurisdiction over a special section of railway lying within an adjoining province. The second difference is that the cost of the railway police is divided between provincial Governments and the railway administrations. We would deprecate any change in the existing position, and would resist any proposal which has the appearance of placing the organisation and control of the railway police to a greater extent than at present in the hands of the Government of India. All that is required is that the jurisdiction and cost of the railway police should be made an All-India matter. We recommend therefore that the words "so far as jurisdiction and cost are concerned" be added to *item 28*.

38. We feel that *item 30* as it stands does not fully cover the case of medical research. The Government of India maintain a bacteriological staff for enquiries connected with public health, and in addition to maintaining a central research institute they also provide part of the staff of some provincial institutions. They further administer the Indian Research Fund. We suggest that the words "Central agency for medical research and" should be inserted at the beginning of the entry.

39. *Item 33*.—While we agree that archæology should be classed as an All-India subject, we are anxious to consult the Government of Madras before we definitely recommend that the provincial archæological establishment should be taken over by the Government of India. The position of the officers of the provincial department will be affected by this change, and we think it right that the local Government should be given an opportunity to express their views before a final decision is taken. The committee's remark that the Government of India had suggested that archæology should be classed as an All-India subject is not quite accurate. The suggestion was a departmental one but we think it was right in principle.

40. The entry in the remarks column opposite *item 36* is one which, as we have already said, should in our opinion be of universal application. We think it absolutely necessary that the Government of India both as the agent of Parliament and in its own interests should be in a position to demand returns and information on any subject in any form required. This was recognised in para. 291 of the Report, and we recommend that the point should be freed from all doubt by the insertion of a definite provision to this effect in the rules to be framed by the Secretary of State.

41. We come now to the omission from the All-India list of matters which in our judgment are too important to be relegated without specification to the committee's residuary *item 40*. After *item 3* "Relations with native states" we suggest an entry "Political charges." There are various charges of a political nature, for example, political pensions, which do not affect our relations with Indian states, and all of which are of an All-India nature. It seems advisable that such charges should be definitely included as an All-India subject.

42. Another matter of a political nature which finds no place in the list is that of State prisoners. There are three regulations for the confinement of State prisoners, *viz.*, Bengal Regulation III of 1818, Bombay Regulation XXV of 1827 and Madras Regulation II of 1819, besides certain ancillary ones. The detention of any person as a state prisoner under the Bengal Regulation requires the orders of the Governor-General in Council, while for detention under either of the other two regulations the orders of the Governor in Council concerned are sufficient. Though the Governments of Madras and Bombay thus theoretically enjoy full powers under their respective regulations, the Government of India could not under modern conditions allow these powers to be exercised without reference to them. We propose, therefore, to include this subject after *item 27* in the All-India list.

43. *Item 4* is probably intended to cover only the general administration of territories other than the provinces included in the schedule. The Andaman Islands occupy a somewhat special position. Their problems are those of penal rather than of general administration, and we propose to include them, together with the Nicobars, which are in practice administered from Port Blair, as a separate subject, which might suitably be included in the list after *item 4*.

44. It is also desirable to provide for the possibility of re-distributions of territory affecting provincial boundaries which may follow the introduction of the new régime. Such re-distributions are clearly a matter which must be regulated by the Central Government. This will also necessitate the retention of power to declare the laws in force in the new areas. We recommend that an entry should be made in the All-India list "Territorial changes other than intra-provincial, and declaration of laws."

45. One notable omission, however, from the All-India and provincial lists is the subject of stores, with which stationery is closely connected. The classification of this subject presents peculiar difficulties. We do not desire to see it made wholly All-Indian, while it is clearly undesirable to make it entirely provincial. Competition between local Governments would undoubtedly tend to raise prices, and provincial stores departments could not afford the same stimulus to industrial development as a central department which was in a position to place large orders with single firms and thereby could enable them to compete successfully with foreign producers. Any division of the subject, however, is impossible without detailed investigation. We propose therefore, as recommended in para. 196 of the Industrial Commission's report, to appoint a committee as soon as possible to examine the extent to which decentralisation in regard to stores will be possible, and in the meantime we suggest that stores and stationery be added to the All-India list after *item 20*, on the understanding that such measures of decentralisation as are found by the Governor-General in Council to be advisable will be introduced as soon as possible. Government printing should also find a place in both the all-India and provincial lists, so as to provide for both central and local Government presses.

46. Food-supply is another topic requiring notice. Recent experience in India has proved the necessity of making the regulation of food supply an All-India subject. The point is one which hardly calls for argument; it is sufficient to say that in times of shortage, such as this country is now passing through, it is essential that the Government of India should be in a position if necessary to centralise control of all food supplies. The same need has been felt in the case of fodder, fuel and other articles. The central Government is the only authority which can adjudicate upon the competing needs of

the various provinces; and we feel strongly that it should be able to regulate inter-provincial trade in them at any time. We propose that such regulation should be definitely recognised as an All-India subject and that the following item should be added to the All-India list 19-A. "Regulation of food supply, fodder, fuel, and trade generally between provinces in times of scarcity."

47. Pilgrimages beyond India are clearly a matter which does not come within the sphere of any local Government. The most important is the Hajj. We would add such pilgrimages as an entry in the All-India list after the existing *item 26*.

48. Government of India records and the Imperial Library are also topics which find no mention. Both are All-India subjects, and should be added as a joint entry 30-A after the existing *item 30*.

49. Government of India buildings should also find a place in the All-India list, and may be inserted as *item 30-B*.

50. Another matter of sufficient importance to be included in the All-India list is the regulation of ceremonial, including titles and orders, precedence and darbars, and civil uniforms.

51. Provision should also be made for the regulation on uniform lines as an All-India subject of the higher language examinations.

52. The last addition which we desire to make to the All-India list is the Government servants' conduct rules. At present the conduct of Government servants is regulated by rules issued by the Governor-General in Council. It is clear that in the case of the All-India services the Governor-General in Council must continue to regulate the conduct of officers. We feel that it would be very undesirable to have one rule of conduct for the All-India and another for the provincial and subordinate services. The maintenance of the present integrity and high standards of the services is an All-India interest. We consider therefore that the conduct of Government servants generally must be made an All-India subject, and we would add it after the existing *item 37*.

53. One onerous responsibility of the Government of India during recent years has been the watching and handling of political activities throughout the country. These have

had the widest possible range, from proceedings which are covered by the criminal law to others which lie well within the limits of orderly and constitutional activity. The subject ramifies broadly and includes not merely matters like passive resistance or organized agitation which may at any moment call for intervention, but also organizations which are primarily non-political, such as boy-scouts, civic guards, volunteer *samitis* and proceedings like strikes and picketing in the industrial field. We feel that while the central Government which is ultimately responsible for the peace of India cannot but feel a close interest in such matters, the actual handling of them must be to a great extent committed to local Governments' hands. We think it better not to attempt to gather them up in any comprehensive definition as an item in the All-India list, but to treat them as sufficiently covered by the committee's *item 40*.

#### PROVINCIAL SUBJECTS.

54. We turn now to the list of provincial subjects. Our comments upon the All-India list will have suggested that here also our criticisms are mainly on points of detail. There are, however, a large number of these in regard to which we desire to make suggestions.

55. From *item 1* we propose the omission of all words after "Cantonments Act." Our reasons will appear from para. 109 below in which we discuss the transfer of this subject.

56. *Item 2*.—While we accept the proposal that medical administration should be provincialized, we consider that the last five words of this item should be removed and added at the end of *item 42*. Our reason is that we are strongly of opinion, on grounds that we shall develop later in this despatch, that medical education should be made a reserved subject; and the other matters included in *item 2* will be all transferred, while those composing *item 42* will be reserved. Our attention has been called to the point that the subject of leprosy, which would come under medical administration, is clearly a matter in which the Indian legislature should have power to legislate for the whole of India. We agree; but we consider that the point is covered by the proposals made in paras. 12 and 17 above.

## THE INDIAN CONSTITUTION.

57. It is doubtful whether *item 3* would include the subject of pilgrimages. We have pointed out in para. 47 above that pilgrimages beyond India should be made an All-India subject, and we would like to see pilgrimages within India made a provincial subject and included as a new *item 3-A*.

58. The question of the powers to control in regard to education which should remain vested in the Government of India is a matter of great difficulty. We shall discuss the whole question of the treatment of education in connection with the transferred subjects, and here we desire to make only three suggestions. First, we think that after the words "Benares Hindu University" in *item 4 (1)* there should be added the words "and such other new universities as may be declared to be All-India by the Governor-General in Council." We feel that some such provision is desirable, as it is possible that other universities closely resembling the Benares Hindu University may be constituted in future. Secondly, after "(2) Chiefs' Colleges" we would add "any institutions maintained by the Government of India." Our last comment is contingent on what we say hereafter as to the treatment of higher education and will be disposed of if our views upon that topic are accepted. We feel that the period of five years during which it is proposed to give the Government of India legislative powers with regard to the Calcutta University and the control and organization of secondary education in Bengal is not sufficient. The changes proposed by the Calcutta University Commission are so far-reaching that a considerable period must necessarily elapse before they can be brought into effect and a much longer period before their results can be judged. In the event therefore of the transfer of higher education to ministers (a course which as we shall show you we do not advise) we should propose that for the words "for a period" down to the word "operations" the following should be substituted: "up till the time when the recommendations of the first statutory commission are carried into effect."

59. Regarding *items 5 (b)* and *5 (d)* in the provincial list we would refer you to what we have said in paras. 31 and 30 above.

60. *Item 6* appears to us to require both expansion and amendment. We propose that the following should be sub-

DESPATCH ON FUNCTIONS COMMITTEE'S REPORT.

stituted for it : "Control of water supplies in rivers, streams and lakes, irrigation and canals, drainage and embankments, water storage and water power, subject to such rules in regard to technical scrutiny and financial sanction as may be prescribed." The additions which we suggest in this item are justified by the necessity of retaining control over all water supplies in order that these may not be dissipated and rendered useless for purposes of industrial development, irrigation, etc. Our objection to requiring legislation in such cases has already been explained in para. 33 above.

61. The treatment of land revenue administration (*item 7*) is of special importance. We are prepared to agree to the entries proposed by the committee under this head, but the land revenue administration is so vital to the welfare of the whole country that the Governor-General in Council must continue to regulate it by general principles which like others of the kind the Governor would be required to take into account in dealing with proposals for legislation. We have referred to this matter at greater length in para. 20 above. The disposal of crown lands and alienation of land revenue are subjects which must continue to be a special concern of the Government of India and in regard to which such general principles would necessarily be laid down for the guidance of local Governments. After *item 7* we would insert a new *item 7-A*. "Management of State properties."

62. As regards the committee's explanatory note with reference to *items 9* and *10* in the provincial list we may refer you to para. 17 of this despatch. Our views are supported by the experience of the military authorities as to the need for co-ordinating the action of provincial Governments in this matter of defence against contagious or infectious animal disease.

63. *Item 14*.—The procedure proposed by the committee for the acquisition of land for industrial purposes would be a new departure so far as India is concerned : and we cannot recommend it. We think that the procedure by private Bills, far from facilitating the development of industry, would positively impede it. It would involve expense and delay and the risk of improper influences. Moreover in cases where the Government of India themselves desired to promote an industry, it would be open to the same objection as the pro-

## THE INDIAN CONSTITUTION.

posal already discussed in para. 30. Nevertheless we recognise that our present law is not sufficiently liberal. We propose forthwith to examine the practicability of amending it by specifically extending its scope to cover applications on behalf of industrial enterprises, accompanied by safeguards such as those proposed by the Industrial Commission, and by bringing such applications under the cognizance of the legislature.

64. *Item 16* would give the provincial legislatures power to alter without previous sanction the jurisdiction of the civil courts. Changes may possibly be made which will re-act not merely on the public but on the High Courts and the Privy Council, but we are prepared to face this contingency. We think that in addition to matters relating to the constitution of High Courts, matters relating to the constitution of Chief Courts and the Courts of Judicial Commissioners should also be excluded. The definition of the item as a whole seems capable of improvement and we suggest the following redraft :—

“The administration of justice, including the constitution, organization and powers of courts of civil and criminal jurisdiction within the province other than a High Court, a Chief Court or the Court of a Judicial Commissioner, but subject to Indian legislation as regards courts of criminal jurisdiction.”

65. We have some difficulty in accepting *items 19* and *22* as they stand. The revision of the law in regard both to court fees and to religious and charitable endowments is at present under the consideration of the Government of India. A Bill relating to religious and charitable endowments has been approved by your predecessor and but for the war would have been introduced in the Indian legislature. We are anxious that the legislation on both these subjects should be passed before the reforms take effect, and shall make every effort to ensure this. We recommend therefore that, for the present, *item 19* be made provincial “subject to Indian legislation,” which involves the omission from the definition of all words after “legislation,” and that *item 22* stands as at present on the understanding that the forthcoming Indian Act upon the subject will be secured from alteration by rules under our proposed section 79 (3) (2).

66. The inclusion of the subject “development of indus-



tries" (by which we mean, and obviously the committee meant, manufacturing industries) in the provincial list alone would have the effect of debarring the Government of India from undertaking the direct development of any industry. This is a position which we cannot accept. The subject of industries is of great importance and we reserve our discussion of it as a whole until we come to deal with the transferred subjects. But to anticipate for a moment the conclusions to which our examination of the question has led us, we propose that the development of industries should come within the sphere of both the central and the provincial Governments. In the All-India list we would add the following entry after *item 22*—

See No. 24 —Provincial. The fact that the development of any industry or any industrial research is being taken up by the Government of India will not prevent local Governments from also taking it up (No. 22-A. The development of industries including industrial research.)

and in the provincial list we would alter *item 24* as follows :—

*Vide* All-India list no. 22-A. Development of industries, including industrial research.

67. From *item 26* we would omit all the words after "articles." There is no need to give provincial Governments any power of regulating either the export from or import into India of adulterated articles in which behalf the customs legislation of the central Government affords all necessary powers.

68. In *item 28* for the reasons given in para. 33 above we suggest that the words "by the Governor-General in Council" should be substituted for the words "by or under Indian legislation."

69. In *item 29* for similar reasons we would insert after the word "declared" the words "by the Governor-General in Council."

70. In *item 30*, for the reasons given in para. 37 above we would insert the words "the jurisdiction and cost of" between "than" and "railway."

71. In respect of *item 31*, the only comments which we have to make concern the subjects of poisons and cinematographs. The import of poisons should we consider be subject to Indian legislation. We have recently passed an Act which

## THE INDIAN CONSTITUTION.

provides for the certification of films and are only awaiting the views of local Governments on certain points of detail to bring it into operation. This certification will not, and without great inconvenience to the trade could not, be placed upon a provincial basis. It must, we think, be regulated by the central Government, and we propose therefore that at the end of *item 31 (f)* there should be added the words "subject to Indian legislation in regard to certification."

72. In *item 32* we consider that after the word "news-papers" the word "books" should be inserted.

73. In *item 36* after the word "prisons" we would, in view of the Prisoners Act, add the word "prisoners."

74. In *item 37* we would suggest the addition of the words "and cattle trespass."

75. To the exceptions made in *item 39* should be added after "Indian Museum" the words "Imperial War Museum."

76. *Item 41* relates to the questions of franchises and elections. In our next despatch we shall ask you to decide whether the franchises settled by rules under the Government of India Act are to be regarded as open to revision at the wish of the various parties, or as fixed for the period previous to the first statutory commission. In the latter case the item should disappear. In the former case the reference to Indian legislation should go out, inasmuch as it is not the intention that the Indian legislature or the provincial legislatures should have power to alter rules made by the Secretary of State in Council and laid before Parliament.

77. The reference to Indian legislation in *item 43* appears to us to be too wide in scope. As we have explained in para. 44 *et seq.* of our despatch of March 5, 1919, our view is that the All-India services should be regulated by legislation in Parliament. We consider that these services are entitled to have their conditions settled beyond the possibility of alteration by any authority in India. Within the fundamental limits so prescribed the control of the All-India services is already an All-India subject (*item 37*); which arrangement will of course not preclude the local Governments from determining the day-to-day administration of such services as are under their orders. The case is an excellent example of the thinness of the dividing line between reserved and

some All-India subjects, but inasmuch as the scheme requires that the item should figure on one side of the line, we have no doubt on which side it should remain *Item 43* should accordingly read "Control of the public services other than the All-India services, serving within the province, subject to Indian legislation."

78. *Item 44* does not go quite far enough. We would substitute for it the following —

"Sources of provincial revenues not included under previous heads, whether (a) taxes included in the schedule of additional provincial taxes or (b) taxes outside this schedule in the case of which the prior sanction of the Governor-General in Council has been obtained to the necessary legislation." While for clearness' sake we prefer this redraft, we admit that inasmuch as such taxes can only be imposed by law our redraft of sec. 79 (3) (a) of the Act goes far to render (b) unnecessary.

79. The limits of provincial borrowing, like other points in the scheme, will be determined by rules made by the Governor-General in Council with the sanction of the Secretary of State in Council. If it is held that such rules cannot empower the provincial governments to hypothecate their revenues for the service of a loan, they should be enabled to do this by Indian legislation which should not be open to alteration by the provincial councils. *Item 45* should therefore read "Borrowing of money on the sole credit of the province subject to such rules as are made by the Secretary of State in Council."

80. We do not understand *item 46*. In para. 48 of their report the committee refer to this as a subject which cannot in itself either be reserved or transferred, but to us it does not appear to be a subject in the same sense as every other item in the list is a subject. The committee have possibly inserted this entry in order to forestall the argument that the insertion of penal clauses in a provincial Bill *ipso facto* makes the Bill an All-India subject by bringing it within the scope of criminal law (All-India *item 27*). We sympathise with the committee's object but we would prefer to see it effected by some other means, such, for example, as an entry in the remarks column opposite *item 27* of the All-India list. We would strike out the proposed *item 46* of the provincial list on the ground that there is no real substance in it.

81. There are only two items which we desire to add to the provincial list. The one is "Provincial records and libraries" and the other "European cemeteries and historical monuments and memorials." Both might suitably be inserted between the existing *items* 39 and 40. European cemeteries still in use and some disused ones would come under ecclesiastical administration (All-India *item* 31) but many old grave-yards throughout India would not do so, while places such as the Residency at Lucknow and the Memorial Gardens at Cawnpore with which are associated national memories are nowhere specially included. They might, unless provided for, be treated as gardens and be transferred to ministers' hands. Such memorials must certainly remain the peculiar care of the official Government and we propose to include them as a provincial reserved subject.

#### TRANSFER OF SUBJECTS.

82. At the outset of their proposals for the transfer of subjects the committee, in fulfilment of a pledge given by the Government of India to the Government of Madras, record the formal objections taken by that Government to any proposals involving a division of functions. They note also the reservations or qualifications with which the Governments of Bombay and the Punjab and the Chief Commissioners of the Central Provinces and Assam placed proposals for those provinces before them. Our despatch of March 5 explains that before concluding in favour of the scheme of provincial government proposed in the Report we carefully weighed the objections taken to the division of functions by certain local Governments; and on the present occasion we may be content therefore merely to draw your attention to these dissents. In paras. 45 to 47 of their report the committee go on to deal with particular items in the transferred list. We shall reserve our remarks upon these for subsequent paragraphs.

83. Para. 48 of the report discusses certain matters which, as the committee say, cannot themselves be either reserved or transferred. As regards the first two of these, *viz.* the public services and the provision and distribution of financial supply, we shall explain our views in dealing with sections IV and V of the report. As we have said, we do not clearly understand the purport of item (3) relating to the 'imposition of punish-

ments' and for the reasons given in para. 80 above do not think it necessary to preserve the item in the provincial list. Item (4) relates to any matter which, though included within an All-India subject, may be declared by the Governor-General in Council to be of a purely local or private nature within the province. We have no objection to such a provision although no good illustration readily occurs to us. We think it likely that any given case would be sufficiently cognate either to some reserved or transferred subject to leave little doubt as to the category into which it should fall, and the Governor's intervention under para. 239 of the Report should be necessary only in the event of a difference of opinion which ordinarily need not arise.

84. *Item 5* in the All-India list proposes to treat as an All-India subject all areas excluded from the general scheme of the report, and paras. 49 and 50 of the committee's report explain their views as regards some of these areas, and the effect upon their own proposals for the transfer of certain subjects in the provinces concerned. The treatment of backward tracts was not a matter directly falling within the terms of the committee's reference, although it was inevitable and proper that they should incidentally take cognizance of it. Their suggestions, however, do not deal with all the tracts for which it is necessary to make special provision; and the more convenient course, we think, will be to reserve this section of the problem, regarding which we have been in communication with the local Governments, for a separate despatch, rather than to overload the present one with a discussion of the various points of detail involved. Simultaneously we shall discuss the arrangements to be made for Assam.

85. The difficult question referred to in para. 51 of the committee's report really belongs to the discussion of the report of the franchise committee; and we shall deal with it when we discuss their report.

#### POWERS OF THE GOVERNOR.

86. In section III, part 2, of the report the committee discuss the powers of control in transferred subjects to be exercised by the Governor in Council or by the Governor; and the conclusions which they have reached do not seriously differ from our own, as intimated to you in our despatch of March 5.

The committee (para. 55) support our conclusion that the Governor in Council cannot with advantage be brought directly into the administration of transferred departments. We entirely agree with the committee (para. 58) that a double responsibility will rest upon the Governor, the proper discharge of which will require that he should have power to intervene in transferred subjects on either of two grounds —

- (i) for the protection of the reserved subjects, and
- (ii) for the protection of the special responsibilities, unconnected with any particular subject, which are laid upon him by his instrument of instructions.

This conclusion was anticipated in the remark in para. 83 of our first despatch that "under his instrument of instructions the Governor will have certain peculiar responsibilities which are not identified with the reserved subjects." In either case the Governor will be discharging a duty which he owes to the ultimate authority of Parliament and it must be open to the Government of India in the exercise of their responsibility to Parliament to direct and control him in such cases.

87. To provide for the former case the committee (para. 60) sketch out a procedure which is in general accord with the proposals in paras. 102 and 104 of our first despatch. In para. 60 (8) they go rather further than we had proposed in the direction of empowering the Governor to take emergency action during an interregnum between two ministers, and in such an event we consider that it should be the Governor himself, and not the official half of the local Government, which should take charge of the ownerless portfolio. On the other hand, they omit to carry matters to the ultimate test by providing for the possible retransfer of a transferred subject, in order to end insoluble disagreement between a Governor and his ministers. We regard the proposal made in para. 102 of our despatch as affording the only answer to the inevitable problem which presents itself during the period of transition, that is to say, the problem of what is to happen if ministers and legislature are bent upon a course of action to which the Governor, guided by his instrument of instructions and acting under such directions as he may receive from superior authority, feels it impossible to assent. To our mind this is the ultimate test of dyarchy; and the cardinal assumption, made in para. 12 of our first despatch, that the authority of Parlia-

## DESPATCH ON FUNCTIONS COMMITTEE'S REPORT.

ment must remain paramount over both halves of Government, forbids us to answer it except by providing for a possible retransfer.

88. Para. 61 of the committee's report goes to reinforce the proposals made in para. 40 of our first despatch. In para. 63 the committee suggest material for rules of the kind for which we proposed to provide in para. 13 of the memorandum forwarded with our second despatch. We accept clause (1) of the committee's proposals, and likewise clause (2) (a) which accords with para. 104 of our first despatch. As regards sub-clause (2) (b) we prefer, as we have already said in para. 10 above that in reserved subjects the orders of the Government of India should be addressed to the Governor in Council. As regards sub-clause (2) (c) we think that it should be for the Governor, as we have just observed, to decide any doubtful question of jurisdiction but that once the jurisdiction has been decided the substantive decision should not be that of the Governor in person but either that of the Governor in Council or that of the Governor and ministers, subject in the one case to the Governor's powers under section 50 of the Act and in the other to his power of overruling his ministers. We hope, however, shortly to present to you a draft of the rules which we suggest for regulating the procedure in all these cases.

89. We come now to the important matter of the instructions to the Governor. At the outset we wish to make it clear that we regard these as the appropriate means of affording the Governor guidance in the comparatively delicate matter of his relations with ministers. They measure the extent to which the ministerial portion of the Government is to be regarded as still coming short of a purely constitutional position. They are the means by which the discretion of the ministers and legislatures is still to be regarded in some respects as tempered by the need for securing that the wishes of Parliament in vital matters are not disregarded. But they are inappropriate for regulating the attitude of the Governor in Council, who, inasmuch as he cannot properly receive instructions from the legislature, must remain amenable, if necessary in the least particular, to superior authority. The committee's proposals in para. 67 accord with the intentions of the reforms Report. As regards clause (1) we should prefer as in the existing Act to adopt the phrase "safety and tranquillity" inasmuch as the term "peace" is really included in "tranquillity"; and would

include a reference to the need of mitigating religious animosities before they reach the point at which they express themselves in violence. Items (2) and (3) we accept as appropriate and sufficient. With reference to item no. (4) we would refer to para. 49 of our first despatch. So long, however, as the expression proposed by the committee is included only in the instructions, which it will be left to the Governor to interpret, we see no harm in the adoption of their phraseology. As regards their additional suggestions, we recognize clearly the need for securing Muhammadan education ; but we consider that the proposed injunction should be so extended as to ensure that the Muhammadan community get their fair share of all increased facilities. In sub-clause (2), which is designed for the protection of mission interests, we should prefer to lay down that no changes such as those referred to in the clause should be adopted "which are inconsistent with educational interests." We entirely agree that due provision must be made for the education of the depressed and backward classes ; but we can see no sufficient reason for confining the scope of such an admirable injunction to the single presidency of Madras or to the interests of mere education.

90. While, however, we approve the committee's proposals generally we feel the situation requires something more. As we have said in para. 110 of our first despatch we are anxious that the Governor's instrument of instructions should make it clear that he is to use his powers "resolutely to prevent any deleterious lowering of the standards and ideals of administration which they (the Governor in Council) hold in charge for Parliament." We should like to launch this vast experiment of constitutional changes in India with a clear and unmistakable declaration of the lines on which we hope and intend that it shall be conducted. In Appendix II to this despatch we attach a draft in which we have tried to develop our ideas of what the document should be. It will be plain to you that we think the unprecedented situation requires a pronouncement differing both in contents and in tone from any colonial precedents and carrying with it something of the authority attaching in India to a Royal proclamation.

#### TRANSFERRED LIST.

91. The subjects proposed by the committee for transfer are shown in the list in section III—3, of their Report. We



consider that the list regarded as a whole is a good one and calls for comparatively little criticism. But there are a few matters of the first importance in regard to the treatment of which we find ourselves in disagreement with the committee, and some others of lesser moment on which we desire to offer comments.

92. *Item 2.*—We assent to the transfer of medical administration with the exception of medical schools and colleges which, for the reasons given in para. 107 below, we think should be treated as a reserved subject, and brought into close relation with the committee's *item 42* in their provincial list.

93. The committee's attitude towards the very difficult question of education (*item 4*) is succinctly indicated in para. 45 (1) of their report. They received various suggestions for the division of the subject of education, but came to the conclusion that any partition was unsound and unworkable: and they have contented themselves therefore with leaving European education as a reserved subject and transferring all the rest including university, technical and secondary education to the control of ministers. They propose, however, to exclude the Hindu university at Benares and also Chief's colleges, which by this means become an All-India subject (*item 39* of the All-India list), and they advise that new universities, the extra-provincial jurisdiction of universities, and in the case of Bengal and for a period of five years only, the Calcutta University and also secondary education generally should be subject to Indian legislation. They add that legislation regulating the constitution or functions of a university should be subject to compulsory reservation by the Governor. Such discriminating treatment of the subject, which leaves it partly All-Indian, partly reserved, partly transferred with limitations, and partly transferred without limitation, shows that the committee realized the great risks involved in transferring higher education entirely to the control of ministers at this critical stage in its history.

94. The opinion of local Governments is much divided. The Bengal Government desire to reserve collegiate and European education: the United Provinces Government holds that education is best treated as a whole and is prepared to transfer it, but the official committee which advised the Lieutenant-Governor were divided in opinion. - The Punjab

## THE INDIAN CONSTITUTION.

Government recognizes the dangers, thinks that education best fulfils the canons laid down in the Report for transfer, and reserves its opinion as regards higher education. The Government of Bihar and Orissa are strongly opposed to the transfer at present of secondary, technical and collegiate education. The Chief Commissioner of Assam opposes the transfer of collegiate education. The Government of Madras would reserve education and the Government of Bombay would transfer it. In these circumstances we feel that a heavy responsibility lies upon us. We are bound to look at the matter from the broadest point of view. From the outset the reform and extension of education has been recognized as an integral part of the process of political advance. In November 1916 we wrote :—

“ The first of these obstacles is ignorance.....Great efforts have been made of recent years to extend education, but the wide diffusion that we seek is still a long way off. Even more pressing is the question of its improvement..... In our judgment the system of education in this country requires the most patient reconstruction..... In the present circumstances the main efforts both of Government and of the public can most wisely be directed to securing a standard of higher education that shall be comparable to that enjoyed by other nations and in other parts of the Empire ..... The removal of ignorance,” we added, was to be attained only by giving the boys and girls of India “an education that has fitted them for the walks of life in which their lot is cast.” Only by its gradual removal could “the progress towards the creation of an enlightened and self-governing people ever be achieved.”

Your own view was that

“to progressive improvement in the quality of higher education and to greater diffusion of elementary education we must largely look for the means to overcome the obstacles to political progress presented by religious and social intolerance and by inexperience in public affairs. But I would add that in other countries political opportunity has often proved the cause and not the result of the dissipation of ignorance, and that education alone divorced from political opportunity will not inculcate a sense of political responsibility. What is wanted in the India of to-day, as your proposals show that you rightly apprehend, is that the two should go hand in hand.”

95. The Report on reforms recognizes the ignorance of the people as a grave obstacle to political advance (paras. 134 and 187). It observes that the progress of political education must be impeded by the backwardness of general education (para. 263). It looks to popular government to promote the spread of education (para. 153), and it contemplates that the

direction of Indian education shall be increasingly transferred to Indian hands (para. 187). At the same time it proposes that the first statutory commission shall examine the development of education among the people (para. 262); and it clearly regards education both as essential to further political advance and as one of the chief tests by which the work of the new popular governments will be judged. With all this we cordially agree. Believing earnestly as we do that political enlightenment and wise education cannot be divorced, we cannot rate too highly our responsibility for the latter. The task is one which we must certainly share with the new popular governments. The complexity of the present system and its results, to both of which we shall allude in detail later, convince us that its development and improvement are far too heavy a burden for ministers alone to bear; and the main issue in our judgment is how we can best divide it. The view has been suggested to us that, inasmuch as it will be from the vernacular schools that we shall draw the mass of the intelligent voters of the future, it is our duty to concentrate upon vernacular education, and to leave English education, as a subject in which they will be more interested, to ministers. Against this view is the consideration that English education does not so much require stimulation as skilled guidance, improvement and adaptation, in the light of western experience, to the general development of the country; while it is upon the spread of vernacular education, slow and laborious in the past, that the energies of political leaders can be employed with the greatest hope of rapid success. The matter however is not one for speculative argument, but for decision on the basis of the results of our educational work in the past, and its present arrangement. After a survey of these, which in view of the gravity of the issues we make no apology for placing before you in detail, we propose to examine the arguments for and against transfer of either the whole or a definite part of our educational system, and then to make our own recommendations.

96. We may best describe existing arrangements in the words of our own Educational Commissioner :—

“The control of primary education rests with the local Governments and local bodies, in different proportion in the different provinces. Government maintains a few schools, local bodies a large number, and sometimes the Government, sometimes the local bodies aid a very large

## THE INDIAN CONSTITUTION.

number of privately managed institutions. The curricula are fixed by the local Governments, though in our circular letter to local Governments, dated the 19th September 1916, it was stated that local bodies should have some choice in fixing curricula. The inspecting staff are Government officers, partly under the Director, partly under the district officer, and in certain matters bound to carry out orders of the board (this arrangement sounds complicated but in practice works smoothly). The schools are financed by Government and by the local bodies. The latter pay for their own schools and sometimes, though not always, disburse the grants to aided schools. But in some provinces Government aids privately managed schools. Fifty per cent. of the money classed as local and municipal funds in reality represents contributions made by the local Governments. As regards appointments in board schools, these are generally made by the boards, subject to certain rules governing qualifications, leave, pay, etc. But in the Bombay presidency the board schools are treated almost as Government schools.

Middle education is of two kinds—middle vernacular, which is often classed as primary and similarly dealt with and financed; middle English or Anglo-vernacular, which properly forms a section of secondary education and ought to be treated as such. The proper division, in fact, would be primary and middle vernacular education, and secondary, including Anglo-vernacular middle education.

Secondary institutions are managed partly by Government, partly by local bodies but mainly by private bodies. The curricula are determined partly by the local Governments, and partly by the universities. Inspection, distribution of grants, etc., are made by the local Governments. Appointments in Government schools are made by Government, in aided and non-aided schools by the managing bodies. The management and subsidy of Anglo-vernacular secondary schools by local bodies were deprecated by the Decentralization Commission and by the Government of India. Sometimes, however, as *e.g.*, in the Central Provinces, municipalities do manage secondary schools. The total number throughout India so managed is, however, small. One does not desire to see any extension of the system, since it is desirable that local bodies should confine themselves to vernacular education.

Collegiate institutions are managed partly by the Government, to a small extent by the university, and to a very large extent by private bodies. Their control is divided between local Governments (the Government of India is the local Government in the case of the Calcutta University) and the universities. The universities prescribe the curricula and examinations, local Governments give grants and finally decide cases of affiliation, and hitherto the Government of India have legislated. Here also local bodies manage a few institutions, but their number is only six."

97. Apart from political changes, however, certain changes have been proposed in respect of higher education. Though their report is not yet formally before us we understand that Dr. Sadler's Commission will recommend that the Bengal universities should in matters of educational administration

and policy be made much more independent of the local Government, but should come under the Government of India in respect of legislation, visitation, co-ordination, the encouragement of research and help in recruitment. They intend that the Government of India should make grants to the universities ; but otherwise (except for that Government's legislative powers) the enforcement of the desired standards will be left mainly to the university's conscience and to public opinion. The commission think that on their technical side universities should be mainly self-governing bodies. Financial and administrative business is mainly assigned to one managing body, educational business to another ; but close contact between the university and public opinion is to be secured by the establishment of a large and representative court, whose sanction will be required for any change in the university status and for any substantial expenditure. For the control of high schools and intermediate colleges a novel arrangement is proposed : the commission suggest that they should be regulated by a board which is to be partly advisory and partly executive, which will include representatives of the universities, agriculture, commerce and industry, medicine and education, presumably nominated. This board, they think, should enjoy freedom to act upon its own responsibility in framing and enforcing the regulations which it may find necessary for the welfare of secondary and intermediate education, and must be ultimately responsible to the Government and, in the event of final disagreement between it and Government, the will of the latter must prevail. The commission regard the chances of such a disagreement as extremely remote, and suggest that when it occurs, special means should be taken to mark the gravity of the situation. The local Government should have power to call upon the board to resign ; but if this step is taken, papers showing the points of disagreement and the reasons for Government's action should be laid before the provincial legislature.

98. The second factor in our decision must be the results of our educational work in the past, and the reasons for the acknowledged defects in it. So far as primary education is concerned, the chief defects are well-known. It is very limited in quantity ; there is great wastage by the way ; teachers are ill-paid, poor in quality and commanding little respect ; the inspection is insufficient and indifferent ; as a result the course

takes too long and yields but small results ; and very little of the knowledge attained remains in after life. The conservatism of the rural classes and the defects of the system have in fact reacted on each other. The people need to be awakened to the value of education as making lads better farmers instead of merely spoiling them for a rural life ; and the system needs to be improved by more schools, better trained teachers, better courses and better inspection, all of which means not merely money but wise outlay of it.

99. Middle education is really two-fold and comprises both middle vernacular and anglo-vernacular. The first is associated with primary mainly by the fact that it also is conducted in the vernacular and managed by local bodies. It is far more highly organized, is mostly concentrated in towns or villages of some size, and is in the hands of better trained teachers : it attracts more promising boys and it does train their intelligence and give them a fair equipment of knowledge for the careers before them (teaching, vernacular clerkships, posts as karindas and the like). The best boys go on to English schools. Middle vernacular education, though nominally managed by local or private bodies, is to a greater extent than primary education under the supervision of the department. With the anglo-vernacular schools the case is otherwise. Here the main complaints are that owing to the commercial value of English, that language is often taught too early, and taught badly by teachers who know it indifferently themselves : that (though in this respect matters have been improved) it is occasionally made the medium of instruction too soon, with the result that boys cannot take in the meaning of what they learn and are overtaxed in attempting to do so and that memorising without understanding too often is the chief result. The boys are ill-prepared to go on to a high school and have not acquired any knowledge for any other career. At the same time there is a great demand for cheap English education ; and in many parts of the country private schools are numerous, crowded and poorly equipped. Middle vernacular education marks the final stages of instruction for certain classes of the people, while the anglo-vernacular school is merely the first stage of higher or English education.

100. The accepted policy as regards high schools has been to leave their management largely in private hands.

## DESPATCH ON FUNCTIONS COMMITTEE'S REPORT.

Government has maintained a certain number of high schools as models; and in some provinces it exercises control over curricula by a school-leaving examination. More generally the university recognizes schools for the purpose of presenting pupils for matriculation, and regulates by means of matriculation the courses of the highest classes. The condition of secondary education can best be presented in an extract from the last quinquennial review :—

“In the first place the apparently inexhaustible demand for secondary education, combined with the difficulty of meeting it in an adequate manner, tends to swamp the effects of reform. Existing schools are improved; but new ones spring up, lowering the average of attainment and undermining discipline. One of the Bengal inspectors, speaking of Calcutta, says that owing to the demand for any education, however bad, proprietors are able to manage their schools at the lowest limit of inefficiency without fear of loss of boys. The most necessary ingredients of education, such as discipline, social life, good physical conditions and a reasonable standard of class-work, are not demanded and therefore not supplied. Boys are able to bargain with school managers for concession rates of fees, permission to accumulate arrears and certainty of promotion. The Madras report says that schools up to or over 1,000 pupils are not uncommon, with each form and class divided into several sections, and that in such schools it is found that organisation, supervision and efficiency are sacrificed on the altar of fee-income. The effect of all this upon discipline and efficiency of teaching is noted in some of the reports. The school often depends upon the good-will of parents and pupils, and, where public opinion is weak and uninformed and parents are only too ready to listen to the complaints of their children, the schoolboy becomes the master of his teachers. Faults are condoned and promotion from class to class is demanded under threat of withdrawal. Unwise promotion, says Mr. Mayhew, accentuates the results of defective instruction, hampers the progress of each class by the dragging weight of inefficients, and eventually clogs the matriculation class with an increasing number of hopeless cases.

“In the second place, there is still in some provinces the numbing influence of the matriculation. This affects the school in several ways. The majority of schools in such provinces still, as Mr. Hoinell remarked in an earlier report, acknowledge no law and submit to no supervision or guidance other than that which the matriculation imposes on them. It is impossible that a syndicate sitting in Calcutta should control 789 schools distributed over an area of 78,699 square miles. Rules become relaxed, orders are evaded, and the influence of the inspecting staff is weakened. Again, those effects are produced which have already been observed in connection with the curriculum and the method of treating it, which is inevitably adopted when the sole end in view is the passing of a maximum number of pupils through an external examination. Nor is it only the curriculum which is narrowed. Scant attention is paid to those activities which ought to form so important a part of the pupil's environment. At a time of life when action is natural and essential to well-being the boy is forced into sedentary application to a course which often makes little

appeal to him and in mastering which he receives but little assistance, while his chief recreation is frequently the perusal of highly spiced newspapers."

101. There are 129 English arts colleges of which 94 are privately managed, 70 of these being aided. During the last five years students increased by 59 per cent. ; and of the total number more than one-third are Brahmins. The average cost per student is under Rs. 150 a year. Some unaided colleges are far cheaper. There is a tendency for charges to fall. There is no denying that the majority of colleges are totally understaffed and that this reacts on the life and teaching. The quinquennial report sums up matters thus :—

"The feature of the quinquennium has been the great expansion in numbers. Improvements have been effected ; but these are too often nullified by the necessity of making hurried arrangements for the accommodation of additional students. The number of students per instructor is decreasing. The poor attainments of students coming from the secondary schools hamper the work of professors. Science teaching, conducted to a considerable extent in laboratories, has improved in quality. In other subjects the lecture holds the field and systematic tuition and guidance are often lacking."

Five years earlier, in spite of much that was encouraging, the complaint was—

"The weak point in the system remains the striking inequality in the efficiency of different colleges—not so much in examination results, but in the conditions of study, residence and recreation and all those things that go to make up truly collegiate life."

102. A few statistics may be given to complete the picture. The last published returns show that, taking public and private institutions together, we have 195 colleges in British India with 59,000 students. There are over 10,000 secondary schools, with 1¼ million pupils, and 177,000 primary schools with nearly 6½ million pupils. It is now for us to advise which part, if not the whole, of this great and growing field of administration should be transferred to ministers. Before we state our conclusions it will be convenient to explain the exact meaning which is attached in the following paragraphs to the expressions "primary" and "secondary" in relation to schools or education. We use the words, for the sake of brevity, in a compendious sense ; the former including middle vernacular, and the latter middle English or anglo-vernacular. But the distinction which we draw is not between vernacular and English. It is between types of schools and the purposes



of their work. By primary schools we mean schools which cater for the masses of the people, and in which the great bulk of the pupils are not intended to go further than a middle test of some sort. In such schools the teaching is naturally in the local vernacular. There is a tendency, more pronounced in some parts of India than in others, to add instruction in English; but this does not alter the self-contained character of the schools, or their purpose, which is to prepare the pupils for the ordinary avocations of their own class of life and not for higher education or professional pursuits. By secondary schools, on the other hand, we mean those which aim at an English education as the passport to the university or to skilled clerical or technical employment. Schools of this type may include primary sections, in order that their courses may be continuous; but this does not detract from their character or well-recognized purpose.

103. On a review of all the circumstances, we consider that there is a compelling case for the transfer of primary education. It is that part of the field which will give the fullest and freest play to responsibility at once: it will be most responsive to patriotic effort and it will be the nursery for the broad and enlightened electorate on which the future depends. The labour of bringing primary education up to a reasonable standard, the need for almost unlimited development, the difficulties of gradually making it free and then compulsory—these and its many other problems constitute a task which will be enough, and more than enough, to occupy all the energy and ingenuity of ministers for years to come. Heavy though the task is, in estimating its chances of success we are in general agreement with the report of a committee which considered the question in 1917:—

“At first sight this abandonment of control, by the central or provincial Government, of a department so vitally fundamental to a national scheme of education, would appear to be fraught with grave dangers. Nor are these wholly illusory. It is quite possible, even probable, that at first efficiency will be sacrificed to other considerations and that the popularly elected body will vote money for the less essential objects and neglect the provision for training and inspection. But unless an opportunity for mistakes is given, nothing will be learned. Experience will, we believe, beget greater wisdom, and that in no long time. Once it is realized that education is the business of the people, then the people will see to it that their elected representatives procure them efficient teachers in their schools. Again, it is only thus that education can become really national, and if the demand arises, as we believe it will arise, an elected

## THE INDIAN CONSTITUTION.

council of this kind will be able to raise money for education from sources that never could be tapped by a Government of the existing official type.'

104. We may say at once that to our minds there is an equally compelling case for retaining secondary and university education in the hands of the official and more experienced half of the provincial Governments. India stands to-day in a critical position; and her immediate future, apart from her slower political growth, depends upon the solution of social, economic and industrial problems to which a good system of secondary education is the chief key. If we handed it over at this juncture to untried hands we should be guilty of grave dereliction of duty. We attach, as Appendix III to this despatch, three opinions upon this question which we regard as worthy of the fullest consideration; the first is from an experienced non-official Indian educationist who writes with first-hand knowledge, though we regard the second sentence of his opinion as too sweeping; the second is the opinion of two officials with special knowledge of educational administration, one of them being an Indian; the third is from the pen of a recent Vice-Chancellor of an Indian university. We cannot question the general accuracy of the picture which is here presented, or the conclusions which are based upon it: nor can we avoid the proposition that the time has not come when such important issues as progress and reform in higher education can be committed to the ordinary machinery of the provincial legislatures.

105. The committee have taken a different line. In their recommendation that education as a whole should be handed over to ministers, they have been swayed by one main consideration [para. 45 (1) of their report], the belief that education is impartible. They have concluded that a line of division cannot be drawn through it without raising difficult questions and producing serious administrative complications. For the theory of indivisibility they rely on a statement by Mr. Hornell that "the existing educational system of India is an organic whole," which it is impossible to modify by compartments. This assertion we believe to be too sweeping. Theoretically it is true that the business of education, like the business of government, is one connected whole and must be inspired by one common purpose. But in practice the argument can be pressed too far. University and secondary education must remain in the closest association, as all our

experience and enquiry show ; but the bond between secondary and primary education is far more elastic. Between these two indeed there is already in existence a clear line of demarcation, resting not differences of finance and controlling agency, and emphasized by differences in the type of school and—what is more important—in the type and age of the pupils. No difficulty is experienced by those provinces where the policy is thoroughly pursued in keeping the control of primary schools under local bodies and the control of secondary schools under the provincial government and the university ; and we do not know what are the “serious administrative complications” inherent in such a division which seem to have been pressed upon the committee. Our hope indeed is to make the division still sharper. We have long felt that primary education as a system requires for its satisfactory expansion a directorate and an inspecting organization of its own, and not merely a share in a staff which is occupied with higher education as well. With this reform we should couple the provision within the primary organization of institutions for training all grades of primary teachers ; and we should thus get rid of the apprehension that the independence of the primary system would be impaired by its having to go to the secondary system for some at least of its schoolmasters. We cannot thus regard the theory of the impartibility of education as a practical obstacle to dividing the control of primary from the control of secondary and university education, so long as there is good administrative reason for doing so.

106. An argument which probably weighed with the committee, for it has often been urged on us, is the keen desire of many Indian publicists to obtain control of higher education. They do not regard official management as having been a conspicuous success ; and even those who do not misunderstand our motives consider that we have been too cautious in its development, too ready to sacrifice quantity to quality. They argue also that ministers will gain experience in the control of higher education by their mistakes, that mistakes will not be irremediable, that changes for better or worse will be easily ascertainable, and that if political progress is to depend on education it is only fair that the whole subject should be transferred and the power of developing it placed in the hands of those who are most interested

in the consequences. The argument indeed is pushed even further: we are told that Indian opinion is so strongly set upon the entire control of education that to withhold any part of it will imperil the harmony and good-will with which we hope that the new régime will start. We cannot accept this extreme presentation of the case. We do not deny the general desire of progressive Indians to assume complete responsibility for education, or the disappointment that many will feel if this is not conceded. But there are minority interests which view the prospect of transfer with grave apprehension and have opposed it with all their strength. In any case the future welfare of India is too closely bound up with this decision to allow of sentiment overruling the obvious practical considerations. In particular we would demur to the free application, in the matter of higher education, of the doctrine that the mistakes of inexperience are of little account and can easily be corrected.

107. The practical considerations to which we appeal have been touched upon above. We could supplement them by many concrete instances of the unhappy consequences of entrusting higher education too confidently to private enterprise. We have seen what has happened already in provinces where high school and collegiate education has been allowed to pass largely into non-official control. The worst developments of such a system are described in the Bengal district administration and the Rowlatt reports. We have recently watched the deterioration of a fine private college in northern India under political influences. If further reasons were needed to reinforce our view we should derive them from the present condition of scientific and technical knowledge in India. It is admitted that one of the greatest needs of the country is industrial development and wider openings for her young men in the scientific and technical professions. It is accepted that the public services must be recruited in future to a greater extent in this country. At the same time it is recognized that the possibility of these developments without a deterioration in standards lies to a very great extent in improving and extending the facilities in India for higher learning, particularly on the technical side. We cannot in the face of these plain requirements assent to a proposal to place the control of the legal, medical, engineering, technical and industrial colleges or schools of India in inexperienced

hands. After the maintenance of law and order there is no matter for which the responsibility of the British Government is heavier.

108. Before leaving this subject we may revert to the argument that our educational policy has not been a success in the past. That it has at times been lacking in foresight and perspective we do not deny. During the lean years education received only such funds as were available after more imperative needs had been satisfied. Too large a proportion of the money that was forthcoming was devoted to higher education. In making the distribution which they did, our predecessors perhaps yielded too easily to the wishes of the only classes which were in a position to press their views, and took too little account of the need of building up a sound and well-proportioned system adapted to the economic and political needs of the country as a whole. In particular they were content to let higher education pass more and more under non-official control. For the course which they took we do not doubt that they had reasons which seemed to them good and we have no desire now to allocate blame. We admit the errors of the past and we ask for time to repair them: their reparation is perhaps the most urgent task before us, if constitutional changes are to bring to India the happiness which we hope. For these reasons we accept the committee's proposal to transfer primary education, and we strongly dissent from their proposal to transfer secondary, collegiate and technical (including medical and engineering) education. Reformatory schools should in our opinion be treated as a portion of industrial education.

109. Certain subjects or parts of subjects have been recommended for transfer "subject to Indian legislation." We have already explained (para. 12) our reasons for holding that it is not possible to restrict the transfer of any subject in this manner and in view of this decision it is necessary to amend *items 1, 9, 12, 13, 16 and 17* of the transferred list.

*Item 1.*—We would omit all the words after "Cantonments Act." Borrowing by local bodies inasmuch as it necessarily affects the Indian market is a matter of concern to the central Government. It should be regulated by Indian legislation, but such legislation should be included in the rules to be framed under section 79 (3) (2) of the Act and not open to local amendment even with previous sanction.

*Item 9.*—We are prepared to accept the committee's recommendation that co-operative societies should be transferred, and to go further than the committee in transferring the subject without restriction. The sphere of co-operation is one which we think affords admirable scope for giving ministers a wide discretion.

*Item 12.*—Similarly we would transfer the registration of deeds and documents without restriction. It is true that the matter is of great importance to owners of property and to business interests. We do not anticipate that there will be any strong disposition on the part of provincial legislatures to disturb the well established lines on which it is now administered, but think that it will be well to protect the Indian Registration Act against any modification without previous sanction.

*Item 13.*—As the committee have pointed out in their remarks on *item 21* of the provincial list, Indian legislation in regard to the registration of births, deaths and marriages affects a comparatively small portion of the population. Hindus, Muhammadans and Buddhists are beyond its purview. We do not consider it necessary to make such registration subject to Indian legislation in the case of this small minority, and are prepared to transfer the subject without restriction.

*Item 16.*—We would omit the words after "articles." The regulation of the export and import of adulterated articles is clearly a matter for All-India regulation, and there is no need to give provincial legislatures a limited voice in it.

*Item 17.*—There is little uniformity at present in the standards of weights and measures throughout India, and we are prepared to transfer the subject. If in consequence of international conventions or otherwise the need for securing uniformity by legislation arises there would be a clear case for the exercise of the central Government's overriding legislative powers.

110. We have suggested (para 57) that "pilgrimages within India" be added to *item 3* of the provincial list. We would also make it a transferred subject by adding it to *item 3* of the transferred list.

111. The committee have recommended that all provincial buildings [*item 5 (a)*] should be transferred. To accept

this proposal would mean that the provision of funds for such buildings as district offices, civil courts, and police stations will be regulated by the minister in charge of the Public Works Department since provision for such expenditure is made in the Public Works Department budget and not in the budget of the department concerned. The departmental budgets contain provision for such works only as the department is prepared to carry out. All works carried out by the Public Works Department are provided for in that Department's budget. We cannot, however, place ministers in the difficult position of having to decide between the claims upon their budget of reserved and transferred departments in the matter of buildings, or give them power to refuse to budget for buildings pertaining to reserved departments which the members in charge of those departments consider to be necessary. The transfer of provincial buildings should therefore be restricted to those buildings which are connected with transferred departments, and the buildings of reserved departments should be reserved. We recognise that since the control of the Public Works Department generally, including the control of the staff, is to be transferred, the minister will still be in a position to deny buildings to the reserved departments by refusing to carry out building schemes for which budget provision has been made. If such a difficulty presents itself the Governor must be left to deal with it. recourse to private contractors may prove to be a useful alleviation ; but in any case it presents less serious prospects of trouble than the arrangement which we seek to avoid.

112. It follows from the changes which we have proposed above (para. 30) in *items 6 (a)* of the All-India and 5 (*d*) of the provincial lists that *item 5 (d)* of the transferred list should be omitted. Consequential changes are also required in *item 5 (b)*.

113. *Item 8*.—The committee support their proposal to transfer fisheries by the argument that the subject should not be separated from the cognate subjects of industrial development and co-operative credit. If, however, our proposals in para. 120 below are accepted, industrial development will be a reserved subject and the argument ceases to have weight. We incline ourselves to the view that fisheries are as closely connected with agriculture as with any other subject, and we agree that agriculture (*item 6*), should be transferred. We

see no particular reason why fisheries should be treated in the same way in all provinces, but on the other hand we can find no strong reason for reserving fisheries in Madras, if agriculture is transferred. On the whole, we are prepared to accept the committee's proposals.

114. *Item 10.*—Bombay is the only province in which the transfer of forests is tentatively advocated by the committee. Their suggestion is strongly opposed by the Inspector General of Forests, who fears that inexperienced management may result in the destruction of valuable commercial assets. He urges that if it is thought necessary for political reasons to embark on what he regards as a dangerous experiment, its scope should be confined to the comparatively restricted forest areas of the Central Circle. We realize the force of the Inspector General's arguments, but on the whole are prepared to accept the committee's suggestion as it has the Bombay Government's support. We have no objection to the transfer of forests which serve particular villages or groups of villages to local bodies subject to schemes of management to be approved by the Governor in Council. The questions of the powers of the Inspector General and of control of the senior appointments in the provinces will require further consideration.

115. *Item 11.*—The chief difficulties in regard to the transfer of excise have been noticed by the committee. We approve the safeguards provided to protect the interests of the Government of India as both necessary and sufficient. The question of the staff in Bombay and Madras will receive our careful consideration when the time comes. Difficulties are likely to occur with a staff which will be under ministers in respect of their excise duties and ultimately under the Government of India in so far as their work is concerned with salt. The only satisfactory solution may be a complete separation of the staff of the two departments, but we see no reason to defer transfer until such a separation has been effected. We would postpone consideration of the problem of staff until we have some practical experience of the difficulties involved. While we recognise that in some provinces popular opinion may lead the legislature to take steps in the direction of total prohibition, and while we appreciate the dangers from this course of the spread of illicit practices, as well as the inconveniences which may be caused more particularly to those classes to whom drink is no real danger in



India we are yet prepared to transfer excise at once. We fully realise that excise occupies a special position in Madras from the revenue point of view, but regarding the matter from the broader ground of general principles we agree with the committee that excise conditions are not so peculiar as to justify its reservation in that presidency. We agree also that excise should be a reserved subject in Assam.

116 *Item 15*.—We come now to the vital question of industries. This is practically speaking a new administrative subject, the future importance of which has been strongly emphasised in para. 336 of the Report on Indian constitutional reforms. It is moreover a field where the divergence of racial interests is likely to make itself felt with some acuteness. The committee have made the following proposals.—

- (1) that the development of industries be made a provincial subject, except for the matters covered by *items 20* and *30* of the All-India list (articles whose production, etc., requires control in the public interest, and central research institutes), and for heads, such as that of geological survey (*item 22*), which relate closely to the development of industries.
- (2) that the development of industries be made a transferred subject.

The committee have evidently felt that this allocation of responsibilities is not free from objection, since they admit in para. 45 of their report that they have vainly tried to draw any clear line between local and other industries, or to frame a distinction based on the relative importance of different industries. To draw any such distinction is, we agree, impossible ; but the conclusion to which the committee have been led in consequence does not commend itself to us. Our own conclusions are, briefly, that the development of industries should be concurrently undertaken by the local Governments and the Government of India ; and that this subject should, so far as local Governments are concerned, be reserved. Our reasons for these conclusions will be stated as briefly as possible.

117. In the first place we hold that the central Government cannot possibly divest itself of responsibility for the

industrial progress of the country, which is necessary to secure its military safety, its freedom from outside economic aggression, and its social and political stability. The Government of India's control of railways, tariffs, foreign trade relations and intelligence, the central scientific industries and such services as the geological survey, further emphasises their responsibility in respect of industries. That responsibility should, we think, be discharged by furnishing advice and help to local Governments, by co-ordinating their efforts and by working concurrently with them, rather than by direct control. Secondly, the expenditure on many of the measures necessary for industrial progress is very high. Research and industrial experiment are exceedingly costly in proportion to their results in any one part of the country; without a large and highly specialised technical and scientific staff, mere administrative effort will be barren; nor are either the finances or the requirements of local Governments extensive enough to enable them to give appreciable assistance to large enterprises by loans, guarantees or undertakings to purchase products. The scale of some of the individual enterprises which have recently been started in India was probably not fully present to the minds of the committee when they made their recommendation. Thirdly, experiments, often on a commercial scale, will have to be undertaken, if dangerous gaps in our economic armour are to be closed, and essential links in the industrial chain are to be forged, while there is yet time. There must be a central authority responsible for seeing that this is done, and such authority must command finances sufficiently large and sufficiently elastic to enable them to do the work themselves, if necessary. Finally, a central agency, equipped with a full scientific and industrial staff, is needed to help and advise local Governments, to co-ordinate their efforts, to pool their experience and to set the pace of the advance.

118. For these reasons we consider that the Government of India must be more directly associated with actual industrial work than the committee contemplate, and must be at liberty to undertake themselves any essential item in the industrial programme which local Governments are unable to essay on an adequate scale. That local Governments must participate in the industrial policy of the country fully and not as mere agents of the central Government needs no

demonstration. We will confine ourselves to a brief explanation of the lines on which the concurrent action which we propose should be directed. Local Governments should, we think, have full liberty to undertake any research or to initiate and aid any industrial enterprise that they may desire, subject of course to general financial limitations, and to the general powers of intervention exercised by the central Government, as described in paras. 3 to 6 of this despatch. In practice, however, as we have pointed out, the nature and extent of their financial resources and the scale and relative local importance of any industrial propositions will determine their scope of action with some degree of definiteness. They should, moreover, keep the central Government informed of the lines of work which they are contemplating or taking up. Their technical experts will necessarily be in close and constant consultation with the experts of the central Government ; and this will ensure that, before definitely committing themselves to any enterprise, local Governments will have its technical aspects fully before them, and the *pros* and *cons* of action by themselves or by the central Government will have been fully threshed out from the technical point of view. In such circumstances, it is unlikely that any provincial Governments will embark on lines of work which they are not in a position to pursue successfully. Any waste which occurs in consequence of their doing so would have equally occurred had they enjoyed the sole right of action. With such an allocation of functions, governed not by any paper definition, but by the practical economic facts of each case, we understand that local Governments are likely to be in agreement ; it is, moreover, in our opinion the only way of solving the difficulty, though it postulates the practice of co-operation between the local and central Governments. The importance of this postulate will be seen when we come to discuss the next question, namely, the committee's proposal to transfer the development of industries to the control of ministers. From this proposition at the present stage we entirely dissent and for most cogent reasons.

119. In the first place, every other form of activity which it is proposed to transfer to ministers is conducted by established Government departments with a trained personnel and well defined traditions of procedure. In some provinces there are no departments of industries at all ; in others they have a

nominal existence, but lack expert staff and definite lines of work ; in the one or two provinces where they exist in more than name they are quite rudimentary and have scarcely begun to consider how they are to handle the vastly more responsible functions and wider policy proposed by the Industrial Commission. We think it impossible for a minister untrained in administrative work and inevitably devoid of industrial experience to essay this initial work with success. In the next place, it will be impossible outside one or at the most two provinces, to obtain Indian industrialists practically qualified to fulfil the duty of ministers of industries, nor can such men be expected to seek election, save in specialized constituencies. But from the activities of ministers devoid of business experience there is reason to apprehend much the same results as ensued from the entry of precisely the same type of men into the field of private *swadeshi* enterprise in Bengal in 1907 and in the Punjab in 1913, with the added difficulty that the responsibility for failure will be thrown on the Government as a whole, and not on the minister himself.

120. There remains, however, a still more serious objection. It is our earnest desire that the industrial policy of the country should be directed to securing for Indians the fullest possible participation in future industrial development. The proposals of the Industrial Commission seem to us admirably adapted to secure this end. The Indian press, on the other hand, appears to see in the Commission's report an attempt to rivet the chains of British economic domination still more firmly on the country. This tendency was particularly noticeable in the extremist press, but was not entirely absent from papers of more moderate tone. A policy which seems to us to afford means of assistance especially calculated to benefit Indian enterprise is apparently considered insufficient if it also allows encouragement to British capital to come into the country and to British enterprise to profit any further by the economic resources of India. In such circumstances we are not surprised to find European non-official opinion expressing very definite apprehensions lest an increasing degree of self-government should bring with it an increasing degree of racial discrimination. We do not desire to magnify unduly the extent to which the encouragement of new enterprise can be used to affect the success of future British effort. But we apprehend

that until a far greater sense of responsibility than at present is established among the electorate and the representative assemblies, considerable pressure may be exercised on ministers to refuse any form of aid or countenance to British enterprise and to favour Indian undertakings, especially those backed by political influence, irrespective of their business merits or equitable claims to consideration. The inevitable result would be that the large modern firms, European or Indian, which have as a rule nothing to hope from political influence, but are accustomed to businesslike methods and equitable treatment, would inevitably apply to the Government of India rather than to local Governments, if the latter's functions in respect of industrial matters are in the hands of ministers. This would lead to an undue degree of centralisation, and would devitalise provincial efforts by depriving them of this most promising field of action. We therefore conclude that industries, including in this term industrial education, though they should be a provincial subject with a right of concurrent action secured to the central Government, should for the present be reserved in all provinces. We have already recommended that a new item should be inserted in the All-India list : and we would also omit *item 15* from the list of transferred subjects.

### THE PUBLIC SERVICES.

121. In section IV of the report which deals with the public services the committee have a few variations to propose from our own proposals. They had these before them, but in a condensed form ; and it may be that where the committee have departed from our proposals without giving reasons for doing so, our intentions were not always clear to them. In para. 70 the committee suggest that the demarcation between the provincial and subordinate services should be left to the provincial Governments. We think it important at the outset that the provincial services should be everywhere constituted on more or less uniform lines, for which reason we suggest that your sanction should be necessary to the local Governments' proposals. After the scheme of reforms has come into operation it will be open to the local Governments to vary the provincial services within whatever conditions may be laid down. The professional division will probably include

not merely officers recruited on special contracts, but also officers holding appointments requiring special qualifications, which lie outside the ordinary ranks of the administrative services. We do not understand the difficulty which the committee feel about the proposal that each new permanent post should be added to the cadre to which its duties correspond. It was intended to prevent the services from being substantially altered by the device of creating new posts outside them for the purpose of providing for duties properly appertaining to the service, and for that purpose it seems to us necessary. The committee's proposals respecting temporary additions to the service and rules for allowances and foreign service are in accord with our intentions.

122. The committee agree with us that the Governor in Council should not be brought in as a formal arbitrator in public servants' grievances. They propose that the formal concurrence of the Governor should be required before any order affecting emoluments or pensions, or conveying censure, or disposing of a memorial, can be passed in the case of All-India officers in transferred departments. We accept this suggestion as formalizing our own intentions; the matter can be regulated by the rules of executive business which we propose should be made.

123. On the assumption that the administration of medical matters will be a transferred subject, to which with the limitations already intimated we are prepared to agree, the committee suggest that the private practice of I. M. S. officers should be regulated by rules laid down by you. We accept this suggestion. The enjoyment of private practice is admittedly one of the fundamental conditions of medical service in India, and we agree that the privilege within due limits should be secured by regulations which it is beyond the competence of ministers to alter. We agree also that inasmuch as the value of private practice depends directly upon an officer's station, the posting of I. M. S. officers should require the Governor's concurrence; but in this respect we see no need to distinguish between one service and another. The posting of All-India officers is a matter in which we should expect the Governor in any case to interest himself personally.

124. The committee's next proposal is that any order

adversely affecting any officer of an All-India service, whether serving in a transferred or reserved department, shall, before issue, be considered by both halves of the Government deliberating jointly. We cannot accept this proposal, which runs counter to our leading principle of defining clearly the respective responsibilities of both halves of Government. So far as transferred subjects go the proposed arrangement comes near to formal intervention by the Governor in Council, against which we have definitely advised. So far as reserved subjects are concerned we can see no reason whatever for bringing in ministers except as a purely reciprocal arrangement. Our views have been stated at length in paras. 103 to 108 of our first despatch, and therefore we need not pursue the matter further here. As regards appeals we abide by our suggestion made in para. 48 of the same despatch that disciplinary orders passed by ministers, which affect emoluments or pensions, should be open to appeal. We agree that orders for the posting of I. M. S. officers should not be regarded as orders falling within this category. So far as officers serving with both halves of Government are concerned we prefer the arrangement proposed in para. 51 of our first despatch to the committee's suggestion on page 48 of their report. The committee's next suggestion appears to us to be already secured by the proposals in para. 52 of the despatch. We understand that the committee wish to treat recruitment for the transferred provincial services as a mixed subject. Our view is that a minister, desiring to see any change made, would approach the Governor, who would certainly take action as in para. 103 of our despatch, but we consider that pending legislation the matter should be regarded as a reserved subject and should not be removed from the jurisdiction of the Governor in Council. We agree with the committee's proposal respecting the administration and discipline of the provincial services. Finally the committee suggest that so far as possible the members of All-India services should be secured in the benefits of the conditions under which they were recruited. We are heartily in accord with this aim; but we leave it for you to decide whether it is practicable to give a binding declaration to the effect that the conditions of the All-India services shall never be altered to the detriment of existing incumbents. That is a principle of administration which normally is thoroughly well recognized.

But there are times when overriding considerations present themselves. It cannot be denied that the conditions of service, to interpret the term in the widest sense, are likely in the near future to be altered to the detriment of present incumbents by the process of reforms. The services themselves recognize this and generally have no desire to oppose their vested interests to the cause of reforms or to changes thereby necessitated; but on the whole it seems to us that such a declaration as the committee suggest might give rise to controversy. We believe that it would in any case be ineffective. The only substantial safeguard that we can oppose to alterations prejudicial to the interests of the services is of a different character, and consists in the real danger of destroying recruitment. We see no need for the present to discuss the questions raised in para. 71 of the report. Details of the kind will arise for consideration under various heads: and the question how far the Government of India should control or intervene in the highest departmental appointments within the province is a matter which may be considered at leisure.

## FINANCE.

125. We come now to the committee's treatment of the question of finance. As they explain in para. 84 they felt unable to consider the important proposals developed in paras. 64 to 73 of our first despatch, which circumstance from no fault of theirs necessarily affects the value of their contribution to the discussion of provincial finance. They have naturally not dealt with the question of provincial resources nor with the relaxation of superior control, respecting which matters we would refer you to paras. 58 to 61 of our despatch of March 5. The committee's comments in para. 73 upon our proposals for audit appear to call for no notice.

126. In para. 74 of the report the committee make certain observations upon the position of the finance department. With reference to clause (a) we may explain that we do not contemplate any formal reference of the finance department's opinion to the legislature. It will be available if the legislature or the committee on public accounts should call for it. Clause (b) discusses the finance department's relations to policy; this point is disposed of by para. 74 of our first despatch. In para. 75 (iii) of that document we have anticipated the committee's



next remark. Their last point does not seem to us to be of much importance. Even if the Governor directed an irregularity by way of excess over the budget provision or of re-appropriation, it would still be reported to the committee on public accounts.

127. The committee (para. 75) have generally accepted our proposals for the sources of taxation to be assigned to provinces. As regards their comment on the phrase "unearned increment on land" we may explain that what we had in view was the rise in value of building sites near towns. We are not sure if any reference to the permanent settlement was present in the committee's mind; but we think it unnecessary to speculate how future political changes may affect that question. The term "unearned increment" would no doubt cover rises in the value of agricultural land; but in temporarily settled areas the resettlement of the land revenue takes account of these. We did not ourselves intend enhancement of revenue to be comprised in our proposals for taxation. We reserve for closer consideration the question of further taxation on transfers of immoveable property otherwise than by succession. We see no real difficulty about collecting new sources of provincial revenue by means of stamps. The fact that they were collected by such means would not necessarily make them All-India, the problem is only of definition.

128. The committee's observations upon the procedure for obtaining provincial taxation in paras. 76 and 77 will not apply if our proposals for the separate purse are adopted. We note that provincial taxation does not appear in their list of transferred subjects. Their observation that the department which is appointed to collect the tax should be entitled to a hearing on the subject of its responsibilities, is covered by paras. 73 and 103 of our first despatch. We agree with the suggestion made in para. 78 of their report. In para. 79 they point out that revenues can be raised and abated without process of legislation and indeed only partly with reference to revenue considerations. The committee's suggestion for the treatment of such matters by the separate halves of the Government is met by our proposals for the separate purse; indeed the view they take upon the point goes far to reinforce our arguments. Their suggestion in para. 80 upon the subject of borrowings has been anticipated in paras. 62

## THE INDIAN CONSTITUTION.

and 72 of our first despatch. Their proposals in para. 81 of the report for the treatment of provincial balances are, we think, disposed of by our recommendations in para. 70 of the same paper.

129. Para. 82 of the report raises a question with which we have not so far dealt. We agree that it is as necessary to define the normal sources of local taxation as of provincial taxation. A local body may attempt to appropriate to its own purposes sources of revenue that are really provincial as well as sources that are All-Indian, but it seems to us sufficient to prescribe that the existing scope of local taxation, so far as it lies outside the provincial schedule, may not be exceeded without the previous consent of the Government of India; we may leave it to the provincial Governments to protect their own revenues against the incursion of local bodies' taxation. As regards para. 83 of the report we think that borrowings by local bodies in the Indian market should be subject to the same control as at present.

## CONCLUSION.

130. We desire to bear testimony to the ability and thoroughness with which the committee have discharged a very difficult task, and have presented us with a scheme which with the modifications that we have suggested, we accept as a practical solution of the problem. Compared with the simplicity of present arrangements it is necessarily complicated. So far as reserved subjects are concerned we do not think this greatly matters. The cardinal principle laid down in para. 24 of the committee's report will enable control to be exercised where necessary in an effective and at the same time a flexible manner. In the case of transferred subjects we realize that there are necessarily several points of contact on which difficulty may arise between the popular part of the provincial Governments and the Government of India, as for example in the case of excise, education and medical administration. At the same time we readily accept this possibility as part of the price of our reforms. We think that the committee have been successful in avoiding intricacies, and in rectifying frontiers as far as possible. We must rely for help in the solution of difficulties on the Governor's powers in relation

to ministers , and also on the fact that the Government of India, being agents for Parliament which must remain the paramount authority, can never sink to the level of a merely federal government. In all its main aspects therefore and with the modifications which we have suggested we cordially accept and endorse the committee's scheme.

131. Our colleague Sir Sankaran Nair has stated in a separate minute the extent to which he dissents from our conclusions.

We have the honour to be,

Sir,

Your most obedient, humble Servants,

(Signed) CHELMSFORD.

„ C. C. MONRO

„ C. S. NAIR.

„ G. R. LOWNDES.

„ W. H. VINCENT.

„ J. S. MESTON.

„ T. H. HOLLAND.

„ R. A. MANT.

**XIII.—Fifth Despatch of the Government of India on the Franchise Committee's Report.**

To

THE RIGHT HONOURABLE EDWIN MONTAGU,

*His Majesty's Secretary of State for India.*

*Simla, April 23, 1919.*

SIR,

We have the honour to lay before you our views upon the proposals for franchise and constituencies and the composition of the reformed legislative bodies, made by Lord Southborough's committee in the report which we herewith enclose.

2. Before we deal in detail with the report one preliminary question of some importance suggests itself. As you will see; the work of the committee has not to any great extent been directed towards the establishment of principles. In dealing with the various problems that came before them they have usually sought to arrive at agreement rather than to base their solution upon general reasonings. It was no doubt the case that the exigencies of time alone made any other course difficult for them; but in dealing with their proposals, we have to ask ourselves the question whether the results of such methods are intended to be in any degree permanent. Their colleagues of the subjects committee have proposed to treat Indian and provincial franchises and elections as a provincial matter "subject to Indian legislation." The intention, however, as we understand it, is that these should be determined by rules made by the Governor-General in Council with the sanction of the Secretary of State in Council under sections 63-E, (a) and (c), and 74 (2) and (4) of the Government of India Act as the draft Bill proposes to amend it. The Bill moreover provides, and we think rightly, that such rules should not be subject to repeal or alteration by the Indian legislature. Whatever be the machinery for alteration, however, we have to face the practical question of how long we intend the first electoral system set up in India to endure. Is it to be open to reconstruction from the outset at the wish of the provincial legislatures, or is it to stand unchanged at least until the first statutory commission? There are reasons of some weight in either direction. In the interests of the growth

of responsibility it is not desirable to stereotype the representation of the different interests in fixed proportions ; the longer the separate class and communal constituencies remain set in a rigid mould, the harder it may become to progress towards normal methods of representation. On the other hand it is by no means desirable to invite incessant struggle over their revision. If the new provincial and Indian legislatures are to address themselves successfully to their heavier responsibilities, it is desirable that they should not be distracted by the acute contentions between religions and classes which questions of redistribution will arouse. In practice we believe it will not be possible to alter the constituencies at the instance of a majority in the legislatures. The disposition to insist on communal electorates, our own pledges to some minority interests, and the need for preventing a disturbance of the balance of power against the official government will make change difficult ; indeed we anticipate that Indian political opinion will itself prefer to treat the proportions once allotted as fixed for a given term. We do not expect that the initial allotment will be abandoned until political life in India becomes more reconciled than it is at present to what we regard as a fundamental principle of responsible government, namely, the validity of a majority decision. Until that time comes the determination of the constituencies must rest with Government ; and the heavy responsibility which is thus placed upon us compels us to submit to a closer examination than might otherwise be necessary those of the committee's proposals which seem to us open to criticism.

3. With one exception we endorse the committee's recommendations regarding disqualifications (para. 7 of the report). In the present conditions of India we agree with them that it is not practical to open the franchises to women. Our colleague Sir Sankaran Nair, however, accepts the view of Mr. Hogg, that the sex disqualification should be removed from the outset. We cannot, however, agree that subjects of Indian States should be entitled, either to vote for the legislatures which are partly to control the Government and to make the laws of British India, or, to anticipate a further proposal of the committee (para. 26), that they should be eligible for election to such bodies. Discussing the latter point in para. 26 of the report the committee observe that there are many such persons residing in British territory, with which place of residence

their interests are identified. We note that sections 63, 74 and 76 of the Government of India Act, as amended in 1916, admit of the nomination to the legislatures of a subject or ruler of an Indian state. That innovation, as you will remember, was the outcome of doubts which had been raised as to the competence of ruling chiefs to be appointed to the legislative councils. There was no question of making such persons eligible for election. Indeed in their despatch no. 38 of October 16, 1913, our predecessors said definitely that they intended no such thing. Moreover the arrangement then under consideration related to what may now almost be described as a bygone age. The councils are no longer to be a collection of individual advisers of the Government, but are to be representative bodies. At the same time the Report on Indian constitutional reforms (para. 299) has taken the opportunity, as we think wisely, of emphasising the principle that the Indian States should abstain from interference in the internal affairs of British India. We need not now refer to previous discussion of the status of the subjects of Indian States. It may be expressed briefly by saying that while in relation to a foreign power they can claim the protection of the paramount power, in respect of the domestic affairs of British India, they are aliens. By this broad principle we should prefer to abide. No one is entitled to assist in making the laws of a country but citizens of that country; and if subjects of Indian States who are settled in British India desire either to vote or to stand for the provincial legislatures they should first, in our opinion, acquire the status of British Indian subjects.

4. As regards the qualifications of the electors we agree that some form of property rating is the only possible basis for the franchise. We have not found it possible in practice to introduce any educational modification of the qualifications based on wealth. The committee have made no comparison of the property qualifications which they propose in the various provinces, nor have they explained the variations which here and there they admit between different parts of the same province. We ourselves know no way of expressing the different qualifications of revenue, rent, cesses, rates and income-tax in any common term otherwise than by translating them all, even though the process involves some debatable factors, into the common denomination of income. Para. 225 of the Re-

port says " We must in fact measure the number of persons who can in the different parts of the country be reasonably entrusted with the duties of citizenship", and though we agree with the remark which follows in para. 226 that no great value attaches to *a priori* considerations as to the amount of income which may be held to constitute a qualification, the fact remains that as the committee have given us no general account of the income of the proposed voters, whether rural or urban, we find it very difficult to form any picture of the standard elector whom they have in view. In its absence we feel that we can only judge of their proposals broadly by the size of the resultant constituencies.

5. One of the voting qualifications proposed by the committee generally is the payment of income-tax. When they were considering the question, the limit of assessable income was Rs. 1,000 a year: as you are aware, it has recently been raised to Rs. 2,000. It would be out of the question, we think, to institute a separate assessment of incomes for purely franchise purposes. We have therefore considered whether the adoption of the new standard would seriously disturb the balance of power between the various classes of voters. We do not think that this result will follow, because except in the Punjab, the other urban qualifications have been fixed so low that people in towns whose income is between Rs. 1,000 and Rs. 2,000 a year would probably have them, while in rural areas the number of persons affected by the change is probably not large. But we should be glad to obtain the advice of local Governments upon the point

6. One palpable difficulty that presents itself in connection with the question of property qualifications is the relative poverty of the Muhammadans as a body. The committee have dealt with this problem by keeping the franchises even between the communities in the same areas (para. 10). The result is that the proportion of Muhammadan voters to the Muhammadan population is smaller than in the case of the Hindus, and the value of a Muhammadan vote is larger than that of a Hindu vote. This no doubt involves discrimination; but we agree with the committee that such discrimination is less invidious and fairer than would result from differentiating the qualifications.

7. In explaining their chief departure from the principle

of a wealth qualification (para. 9), the committee make no reference to the fact that our opinion upon the question of soldiers' voting was placed before them. Our view was that Indian officers and soldiers should not be given any special preference ; they should get a vote if otherwise qualified like anyone else, but, in view of the inexpediency of introducing politics into the Indian army, they should not exercise the vote except while on leave or after retirement. The committee, taking a middle line between Sir Michael O'Dwyer's desire to enfranchise commissioned Indian officers as such and the proposal made by the Punjab non-official members to admit to the vote wound-pensioned soldiers as well, have proposed to treat certain kinds of military service as qualifying for the vote in all provinces. We recognize the force of the arguments in favour of according especial recognition to military service ; but if they are to be admitted we can see no reason for stopping short of the sepoy. We think the better plan is to adhere strictly to the property qualification, except for what may be called the corporation electorates. In this view we would omit the qualification of title-holders which the committee would retain in certain landholding constituencies. We regard it as no longer required ; and in its executive origin it is clearly open to the objections taken by a minority of the committee in para. 27 to another proposal.

8. In arriving at the size of the electorates shown in para. 11 of their report, the committee have attempted no uniformity of standards. Except in the case of Madras and Bombay, they have for the most part adopted the varying proposals of local Governments. We fully recognize the need for local variations, but we consider that such variations should bear some relation to established facts ; and our difficulty is to correlate the size of the suggested electorates with the progressiveness of the provincial populations whether judged by wealth, education or political activity. The individual opinions of the local Governments, each looking to its own province, have been the deciding factor, tempered by the moderate adjustments made by the committee. Since the report was received, the Madras Government have informed us that their revised estimate of the electorate in that presidency is lower by 100,000 than the comparatively small total which the committee expected their proposals to yield. This new fact lends additional force to the recommendation which



we are disposed to make. Looking to the proposals as a whole, our conclusions are that the franchises should be so varied as to result in a slight enlargement of the Punjab electorate and a considerable enlargement of the Madras electorate, that the large electorates proposed for Bengal and the United Provinces should be reduced by something like one-third, and that Assam should be reduced in somewhat similar measure. Our colleague Sir Sankaran Nair, however, would accept the committee's proposals as regards Bengal, Assam and the United Provinces. As to the Punjab, he agrees with Sahibzada Aftab Ahmed.

9. We are confirmed in our opinion by our examination of some of the individual constituencies suggested. We note the committee's assurance in para. 10 of the report that the proposed constituencies are not too big, but as a matter of practical business it does not convince us. It must be remembered that we are wholly without experience of the difficulty of holding elections on rolls of many thousands over wide areas. We feel great doubt whether it is within the capacity of the ordinary district staff to hold elections every three years upon a total roll of one hundred thousand electors, most of whom are illiterate and very many of insignificant income, and over and above this, to maintain the roll between elections, and to inquire into allegations of bribery, promises, intimidation, impersonation or the improper admission of votes, which are the grounds on which the validity of an election may be impugned. Nor do we see much prospect of strengthening the district staff for the purpose. Most of the non-official assistance, which is ordinarily forthcoming in district work, would, at election time, be itself engaged in the political campaign. In the interests of the reforms, we should be very reluctant to see the conduct of polling at the numerous out-stations committed to the hands of subordinate officials who might be too open to improper influence. The work at the outset must be mainly done by a responsible official staff, and until further experience has been gained it should be kept within bounds which they can manage. We understand that in the provinces where the constituencies are largest they were so framed in the hope of preventing them from being readily captured by the professional politicians; but whether there are good grounds or not for such anticipation, it seems to us that in attempting to hold elections with

an inexperienced electorate and a strictly limited agency on so huge a scale there is great risk of discrediting the experiment at the outset by electoral scandals. In most provinces the district rolls proposed are manageable, but in Bengal and the United Provinces we desire, as we have said, to see some substantial reduction made. We cannot seriously conceive it as a physical possibility to take two of the committee's examples, that 122,000 voters could be polled in the district of Bakargunj, almost entirely devoid of roads and traversed in all directions by vast rivers; or that 96,000 voters could be polled in the Almora district, a tangle of great mountain ranges, among which all communication is slow and painful.

10. The next point for consideration is the size and general composition of the councils. The present maximum strength of the councils in the three presidencies, the United Provinces and Bihar and Orissa is fifty, and in the Punjab, the Central Provinces and Assam is thirty. The Congress-League scheme proposed a strength of one hundred and twenty-five in the major and of from fifty to seventy in the minor provinces. Even if the Punjab and Bihar and Orissa are to be regarded as major provinces, it would hardly be reasonable to give them councils of approximately the same size as the three presidencies and the United Provinces. It is difficult to give their proper weight to the various factors which should be taken into account in determining the size of the councils; but we feel that the strengths proposed by the committee correspond closely with the estimate which we should ourselves be disposed to make of the relative importance of the provinces. Bombay is given a slightly smaller council than Bengal, Madras and the United Provinces, but to this no exception can be taken in view of the differences in population. We see nothing to question in the comparative strengths, and the actual strengths also appear to us generally to meet all requirements. We understand that the schedule to the Bill will regulate the maximum strengths of the legislatures, and that their actual size will be regulated by the rules.

11. The actual composition proposed for each council can be judged from the statement which we subjoin.

## DESPATCH ON FRANCHISE COMMITTEE'S REPORT.

PROVINCE.	NOMINATED.			ELECTED.																
	Total nominated and elected.	Total (nominated).	Officials (nominated and <i>ex-officio</i> ).	Non-officials.	Total (elected).	BY SPECIAL ELECTORATES.				BY COMMUNAL ELECTORATES.				Total	BY GENERAL ELECTORATES.		Urban.			
						University	Landholders	Commerce and Industry including mining and planting	Total	Muhammadians.	Rural.	Urban.	Europeans.		Anglo-Indians	Indian Christians		Sikhs		
1. Madras	118	25	19	9	93	14	1	7	6	18	11	2	1	13	..	61	52	9	Non-Muhammadians.	Non-Muhammadians.
Per cent basis	100	21	16	5	78	11	8	6	5	15	9	2	8	83	..	52	44	8		
2 Bombay	111	24	18	9	87	12	1	3	8	15	22	5	2	..	..	46	35	11		
Per cent. basis	100	21	16	5	78	10	0	3	7	20	19	4	1	..	..	41	31	10		
3 Bengal	125	25	20	5	100	22	2	5	15	37	28	6	2	1	..	41	30	11		
Per cent. basis	100	20	16	4	80	17	1	4	12	29	22	4	1	8	..	32	24	8		
4 United Provinces	118	23	18	5	95	10	8	6	3	22	19	3	8	..	..	57	49	8		
Per cent basis	100	19	15	4	79	8	6	5	2	22	22	6	..	..	..	48	41	7		
5 Punjab	83	22	16	9	61	7	1	4	2	36	22	7	..	..	9	21	16	4		
Per cent basis	100	26	19	7	73	8	1	4	3	43	26	7	..	..	..	26	19	4		
6 Bihar and Oussa	98	25	16	9	73	9	1	5	3	18	14	3	1	..	..	46	40	6		
Per cent basis	100	25	16	9	74	9	1	5	3	18	14	3	1	..	..	46	40	6		
7 Central Provinces	70	17	12	5	53	6	1	3	2	7	6	1	..	..	..	40	31	9		
Per cent basis	100	24	17	7	75	8	1	4	3	10	8	1	..	..	..	57	44	13		
8. Assam	53	14	9	5	39	8	..	2	9	12	12	..	..	..	..	19	18	1		
Per cent basis	100	26	17	9	73	15	..	3	11	22	22	..	..	..	..	35	34	1		

These numbers exclude the two experts (or in Assam one), who may be added by the Governor when required.

# THE INDIAN CONSTITUTION.

As regards the proportions of nominated and elected members you will notice that the provinces fall into two distinct groups. The presidencies and the United Provinces form the first. In their case it is proposed to include in the councils from 78 to 80 per cent. of elected members. The remaining four provinces will have from 73 to 75 per cent. These proposals seem to us to accord sufficiently with the relative progressiveness of the provinces.

12. As the committee say, the number of official members must be decided mainly with reference to the requirements of the grand committee procedure. If the grand committee is constituted on the basis of the existing councils the proportion of officials will be slightly higher than those proposed in the scheme of the Report; and on a 40 per cent. basis the difficulty, which the committee apprehend, will become more acute. We are not in a position to make our final recommendations, but we think that this matter will require further consideration after consultation with local Governments.

13. We have analysed in the statement printed below the interests which in the committee's opinion should be represented by non-official nomination :—

Name of province.	Depressed Classes.	Anglo-Indians.	Indian Christians.	Labour	Excluded tracts.	Military interests	Industrial interests other than planting and mining.	Aborigines	Domiciled Bengalis.	Others.	Total.	Percentage of total membership
1	2	3	4	5	6	7	8	9	10	11	12	13
1. Madras. ...	2	...	...	...	2	...	...	...	...	2	6	5
2. Bombay. ...	1	1	1	1	...	...	...	...	...	2	6	5
3. Bengal. ...	1	...	1	1	...	...	...	...	...	2	5	4
4. United Provinces	1	1	1	...	...	...	...	...	...	2	5	4
5. Punjab ...	...	2*	1	...	...	1	...	...	...	2	6	7
6. Bihar and Orissa	1	1	1	1	...	...	1	1	1	2	9	9
7. Central Provinces	1	1*	...	...	2	...	...	...	...	1	5	7
8. Assam.	...	1*	1	1	1	...	...	...	...	1	5	9
TOTAL ...	7	7	6	4	5	1	1	1	1	14	47	...

\* Europeans and Anglo Indians.

# DESPATCH ON FRANCHISE COMMITTEE'S REPORT.

We accept these proposals generally. But there is one community whose case appears to us to require more consideration than the committee gave it. The Report on Indian constitutional reforms clearly recognises the problem of the depressed classes and gave a pledge respecting them. "We intend to make the best arrangements that we can for their representation." The castes described as "Hindus—others" in the committee's report, though they are defined in varying terms, are broadly speaking all the same kind of people. Except for differences in the rigidity of their exclusion they are all more or less in the position of the Madras *Panchamas*, definitely outside that part of the Hindu community which is allowed access to their temples. They amount to about one-fifth of the total population and have not been represented at all in the Morley-Minto councils. The committee's report mentions the depressed classes twice, but only to explain that in the absence of satisfactory electorates they have been provided for by nomination. It does not discuss the position of these people or their capacity for looking after themselves. Nor does it explain the amount of nomination which it suggests for them. Para. 24 of the report justifies the restriction of the nominated seats on grounds which do not suggest that the committee were referring to the depressed classes. The measure of representation which they propose for this community is as follows :—

—			Total population.	Population of depressed classes.	Total seats.	Seats for depressed classes.
			(millions)			
Madras ...	...	...	39.8	6.3	120	2
Bombay ...	...	...	19.5	.6	113	1
Bengal ...	...	...	45	9.9	127	1
United Provinces ...	...	...	47	10.1	120	1
Punjab ...	...	...	19.5	1.7	85	...
Bihar and Orissa ...	...	...	32.4	9.3	100	1
Central Provinces ...	...	...	12.2	3.7	72	1
Assam ...	...	...	6.0	.3	54	...
TOTAL ...	...	...	221.4	41.9	791	7

These figures speak for themselves. It is suggested that one-fifth of the entire population of British India should be allotted seven seats out of practically eight hundred. It is true that in all the councils there will be roughly a one-sixth proportion of officials who may be expected to bear in mind the interests of the depressed, but that arrangement is not, in our opinion, what the Report on reforms aims at. The authors stated that the depressed classes also should learn the lesson of self-protection. It is surely fanciful to hope that this result can be expected from including a single member of the community in an assembly where there are sixty or seventy caste-Hindus. To make good the principles of paras. 151, 152, 154 and 155 of the Report we must treat the outcastes more generously. We think there should be in each council enough representatives of the depressed classes to save them from being entirely submerged, and at the same time to stimulate some capacity for collective action. In the case of Madras we suggest that they should be given six seats; in Bengal, the United Provinces and Bihar and Orissa, we would give them four; in the Central Provinces and Bombay two and elsewhere one. In these respects we think that the committee's report clearly requires modification.

14. We come now to the question of special, as distinct from communal, electorates. The reforms Report (para. 232) expressed a desire that special electorates should be restricted as far as possible, and allowed only where necessary for the protection of minority interests. We find it difficult to hold that the eight university seats proposed by the committee satisfy this criterion. We can discern no real divergence of interest between the universities and the educated classes in general. If it were the case that the university seats were given to academic interest or high scholarship we should welcome their inclusion, but we cannot anticipate that the representatives whom they will return will be different in kind from those of the professional classes in general. The Indian university seats date from the time of Lord Dufferin, when they were instituted in the anxiety to make use of any corporate body of opinion that then existed in the country. For that purpose they are not now needed; and we are inclined to think that the only result of a departure from the principles of the Report will be to add to the representation of the professional classes, and to do

something to carry politics into academic circles. We therefore find much difficulty in justifying their inclusion.

15 The next class proposed for special representation is the landholders. The position taken in the reforms Report was that "where the great land owners form a definite class in any province, we think that there will be a case for giving them an electorate of their own" (para. 232). Our view generally has been that the smaller zamindars ought to be encouraged to feel themselves part of the ordinary electorate; but that where a class of great landholders exists, raised by wealth or birth perceptibly above the level of the countryside, it would be practically necessary to recognise their peculiar status by giving them separate seats and a separate roll. At the last general reconstruction of the franchises in 1908-09 the lowest level of land revenue qualifying for this privileged category was put at Rs. 1,000. This limit was applied only to non-zamindar landholders in Madras and zamindars in Sindh, although the Surma Valley in Assam formed an isolated exception with its limit of Rs 500. Elsewhere the limit ranged from Rs. 3,000 to Rs. 6,000, a standard of land revenue which clearly distinguished the men of high position. Inasmuch as we are now widening the ordinary franchise and seeking to restrict all kinds of special representation there is a case for tightening the franchise of this distinct landholder class. But the committee have proposed special landholder electorates everywhere, and have even admitted to this category some small landholders in the Punjab, where hitherto no special franchise existed and even a year ago was not suggested. We feel great doubt about this recommendation, and we should also like to re-examine with local Governments the proposals for Assam and Madras.

16. The committee (para 21) have made no reference to the drastic reduction which they have effected in the proportion of landholder representation in all provinces except the Punjab and to some extent the United Provinces. On the whole we think that this reduction is right and now gives the landholders sufficient, but not excessive, representation in the provincial councils. The change incidentally favours the landholders of the United Provinces as compared with other provinces; but on examination we find that the principles upon which the existing number of landholders' seats was fixed were not altogether clear. We imagine that the former

# THE INDIAN CONSTITUTION.

disinclination of the great landholders of the United Provinces to intervene in politics explains the small measure of representation which they enjoyed ; whereas in the process of later changes the tendency has been to give the landholders rather a larger voice. Except therefore in one respect we are prepared to endorse the committee's proposals. The local Government of the United Provinces proposed to disregard the Agra landholders altogether. The committee have compromised by offering them one seat. We do not think such a marked discrimination can be justified, and we feel that it will give dissatisfaction to the greater, and on the whole the more progressive, part of the provinces. Admitting all that can be said in favour of the special status and corporate character of the Oudh talukdars, we feel that there are in Agra great landholders who are deserving of at least equal consideration. It seems to us impossible to justify the proposed treatment of the Agra landlords in view of the committee's recommendations for other provinces. In 1908 a United Provinces conference proposed to give two landholders seats to Oudh and three to Agra ; in the event one seat was awarded to Oudh and one to Agra. On the assumption that the province has six landholder seats we consider that three of them should be allotted to Agra.

17. The special representation which the committee propose for commercial and industrial interests is stated in the subjoined table :—

Name of Province.	Planting.	Mining.	European Chambers of Commerce.	Indian Chambers of Commerce.	Trades Associations.	Milowner's Associations.	Cotton Trade.	Jute Trade.	Tea Trade.	Indian Associations.	Inland Water Transport.	Board General.	TOTAL.
I	2	3	4	5	6	7	8	9	10	11	12	13	14
1. Madras ...	1	...	2	2	1	...	...	...	...	...	...	...	6
2. Bombay ...	...	...	3	1	1	2	1	...	...	...	...	...	8
3. Bengal ...	...	1	4	1	2	...	...	2	2	2	...	1	15
4. United Provinces ...	...	...	2	1	...	...	...	...	...	...	...	...	3
5. Punjab ...	...	...	...	...	...	...	...	...	...	...	...	...	2
6. Bihar and Orissa ...	1	2	...	...	...	...	...	...	...	...	...	1	4
7. Central Provinces ...	...	1	...	...	...	...	...	...	...	...	...	1	2
8. Assam ...	...	5	...	...	...	...	...	...	...	...	...	1	6
TOTAL ...	7	4	11	5	4	2	1	2	2	2	1	5	46



These proposals seem generally reasonable. We have examined with some care the relative representation of commerce and industry in Bengal and Bombay, and also the similar representation suggested for Assam, and we are prepared to accept the proposals in the main. Since the committee's report was signed, however, the Government of Bengal in their letter of February 22 (a copy of which has been included in Appendix XIV, page 181, of the committee's report, though the letter was not actually considered by the committee) have proposed after consultation with the interests concerned to distribute the seats allotted to European commerce in that presidency rather differently from the committee. Their scheme involves giving European interests as a whole 15 seats in the council, as compared with the 14 seats proposed by the committee. We accept the committee's total but we think that the distribution should follow the local Government's proposals.

18. We come now to the very difficult question of communal electorates, which was discussed generally in paras. 227 to 231 of the reforms Report. The authors of that Report came to the conclusion that while communal electorates were bad in principle and must tend to delay the development of democratic institutions in India, it was for practical reasons necessary to maintain the special Muslim electorates and advisable to establish similar Sikh electorates in the Punjab. For the purpose of representing all other minorities they preferred to rely upon nomination, for the reasons which they gave in para. 232. These passages in the Report aroused great interest and attracted some criticism in India; and before the committee began their operations it was agreed that these expressions of opinion should not be regarded as too closely limiting their discretion. We attach an extract from His Excellency's speech upon this point at the opening of the sessions of the Indian Legislative Council in September last. In the event, communal electorates are now proposed not only for Muslims everywhere and for Sikhs in the Punjab, but also for Indian Christians in Madras, Anglo-Indians in Madras and Bengal, and Europeans in the three presidencies, the United Provinces and Bihar and Orissa. We feel the objections of principle to the communal system as strongly as the authors of the reforms Report but see no advantage at this stage in reiterating them. India is not prepared to

take the first steps forward towards responsible government upon any other road. The road does not lead directly to that goal, and we can only echo the hope expressed by the committee that "it will be possible at no very distant date to merge all communities in one general electorate." Under existing conditions we see no ground on which the committee's proposals can be questioned. As regards the minor communities we accept the details also, except in so far as the distribution of the elective seats for Europeans requires further examination in communication with local Governments, inasmuch as the committee do not appear to have considered the complication introduced by the presence of a large military population.

19. Far the most difficult question, however, which arises in connexion with the representation of interests is the number of seats to be given to the Muhammadans. As you are aware, representatives of the Indian National Congress and the All-India Muslim League met at Lucknow in December 1916 and arrived at an agreement respecting the proportion of seats to be allotted to the Muhammadan members in the various provincial legislatures and the Indian Legislative Council. The committee, adopting the recommendations of most though not all of the local Governments, have made their proposals conform to this agreement. They found that most of the Indian opinion presented to them in their inquiry adhered to the compact, and they thought that to depart from it would revive a troublesome controversy. We realize very strongly the force of this observation. At the same time before deciding to endorse the committee's conclusion, we are bound to examine the agreement in the light of the principles laid down in the Report on constitutional reforms, and also of its effect in the various provinces. We note that local Governments were not unanimous in subscribing to the compact. The Government of Madras framed their own proposals for Muhammadan representation without regard to it. The Bombay Government while adopting the compact did not rule out from discussion a scheme of representation upon a basis of population. The Chief Commissioner of the Central Provinces was opposed to separate Muhammadan electorates and considered that the percentage proposed in the compact was "wholly disproportionate to the strength and standing of the community." The Chief Commissioner

# DESPATCH ON FRANCHISE COMMITTEE'S REPORT.

of Assam thought it was a mistake, even from a Muslim point of view, to give that community representation in excess of their numerical proportion.

20. The authors of the reforms Report laid it down that the effect of the agreement upon other interests must be examined; and they also set aside as wholly unworkable the second provision in the compact, by which proposals affecting the interests of other communities could be considered in the legislatures only with the assent of the large majority of the community affected. They thought moreover that special electorates for Muhammadans could be admitted only in provinces where they were in a minority of voters. The committee say that their rough estimates show that this is the case both in Bengal and the Punjab. As regards Bengal they are clearly right. As regards the Punjab, our calculation goes to show that the Muhammadan voters are in a slight majority over the combined strength of Hindus and Sikh voters. The margin is not great and it is even possible that actual enumeration might convert it into a minority, but the Muhammadans are in any case far the strongest single community in the province, and as the Sikhs' claim to separate representation has been conceded, it is clearly considerations of expediency rather than logic that would place the large majority of the residuary voters in separate constituencies.

21. The actual effect of the Congress-League agreement can be judged from the following figures:—

		Muslim percentage of population.	Percentage of Muslim seats proposed.	Percentage (2) of (1).
		(1)	(2)	(3)
Bengal	...	52.6	40	76
Behar and Orissa	...	10.5	25	238
Bombay	...	20.4	33.3	163
Central Provinces...	..	4.3	15	349
Madras	...	6.5	15	231
Punjab	...	54.8	50	91
United Provinces...	...	14.0	30	214

The result is that while Bengal Muhammadans get only three-quarters and the Punjab Muhammadans nine-tenths of what they would receive upon a population basis, the Muhammadans of other provinces have got good terms and some of them extravagantly good. We cannot ourselves feel that such a result represents the right relation either between Muhammadans in different provinces, or between Muhammadans and the rest of the community.

22. If we were writing on a clean slate, we should greatly desire to establish a ratio of Muhammadan seats which would bear a closer relation with their strength as a community, while amply fulfilling our undertakings to safeguard them as a minority. In determining that ratio in the various provinces, we should have to start with certain established data. In the first place, the Muhammadans have been definitely promised some electoral advantage on the ground of their political importance. We should have to measure that advantage and to fulfil that promise. Secondly, the Muhammadans are the poorer community, and therefore any property qualification common to them and the Hindus will make the Muhammadan electorate smaller in proportion to the Muhammadan census than will be the case with the Hindus. In the third place, the census strength of the Muhammadans by no means corresponds to their political strength. In Bengal and Assam the Muslims are politically weaker than their numbers would indicate, while in the United Provinces with 14 per cent. of the population they are incomparably stronger than in Bihar and Orissa with 10·5 per cent. Past history and the presence of Muhammadan centres count for much. Fourthly, it might be argued that inasmuch as a majority can always impose its will upon a minority, it does not greatly matter whether the Muhammadans in places where they are in a conspicuous minority are awarded for example, 15 or 20 per cent. of the seats. But we think it a valid answer to observe that the effectiveness of a minority depends upon its being large enough to have the sense of not being entirely overwhelmed. Finally, we should have to remember that whatever advantage is given to the Muhammadans is taken away from some other interest or interests. These considerations would suggest to us a system of weighting which would lead to different results from those agreed on at Lucknow. It would no doubt involve assumed factors, but these

would have a more logical basis than those embodied in the compact.

23. We are not writing however on a clean slate. The Congress-League compact is an accomplished fact and a landmark in Indian politics which we cannot possibly ignore. The actual terms of the agreement were the result rather of political negotiation than of deliberate reason; and in their final form they were closely affected by accidents of place and personnel. But the last thing that we desire is to belittle the importance or significance of concord between the two parties upon so highly controversial a subject. The difficulty with which the agreement was reached is a measure of the earnest efforts made to attain it; and those efforts imply on behalf of the larger community at least a subordination of their immediate interests to the cause of unanimity and united political advance which we should be sorry to appear to undervalue. Since the compact was made, there has been some re-action against it. Several of the more conservative Muslim associations of the Punjab are ill-content with the measure of representation assigned to them, while a large section of Bengali Muhammadans repudiate the agreement altogether and have besought us not to give effect to it. Nevertheless, the Muhammadan community as a whole has not disavowed the action of the League. Organized Hindu political opinion stands by the action of the Congress. We feel, like Lord Southborough's committee, that the compromise, whatever may be its defects, is not one that we ought to re-open, and that it would be a poor recognition of the genuine efforts that have been made in the cause of unity if we were to throw this very difficult problem into the melting-pot again.

24. We accept therefore the conclusions of the committee except in one respect. The Muhammadan representation which they propose for Bengal is manifestly insufficient. It is questionable whether the claims of the Muhammadan population of Eastern Bengal were adequately pressed when the Congress-League compact was in the making. They are conspicuously a backward and impoverished community. The repartition of the presidency in 1912 came as a severe disappointment to them, and we should be very loath to fail in seeing that their interests are now generously secured. In order to give the Bengal Muslims a representation proportion-

ate to their numbers, and no more, we should allot them 44 instead of 34 seats, and we accordingly propose to add ten seats to those which the committee have advised on their behalf. Whether the addition should be obtained by enlarging the council or by withdrawing seats from other interests, or by a combination of both plans, is a matter on which we should certainly have to consult the provincial Government. We should also be largely guided by their opinion in determining whether the extra seats should be filled by election or by nomination. Our colleague Sir Sankaran Nair, however, would accept the committee's report.

25. We agree with the committee that there is no justification for admitting the claims for separate electorates put forward by the smaller communities mentioned in para. 18 of their report. But we confess to the greatest difficulty in accepting their proposals in regard to non-Brahmans in Madras. If, contrary to theoretical principles, communal electorates are to be conceded to three communities in addition to the Muhammadans and the Sikhs, then it appears to us that there is a very strong practical need for finding some means of dealing specially with the non-Brahmans also. The committee were evidently dissatisfied with the position, and saw the need for some settlement which would dispel the anxieties of the non-Brahmans. At the same time they advise that no attempt to reach such a settlement should be made until statutory effect has been given to their own proposals, although these ignore the position of the non-Brahmans altogether. We see grave practical objections to this suggestion. If the reforms scheme is not to start under a very heavy handicap in Madras, the bitter feelings which have been aroused by this controversy must be allayed. We cannot expect co-operation and good will from the non-Brahmans so long as no provision is made to secure their interests. We do not regard it as sufficient to say, as in effect Lord Southborough's committee have said, "since you will not assist us to find a solution, we can do nothing for you." Our own responsibility for the contentment of the country makes it incumbent upon us to make every attempt to arrive at a settlement which will satisfy the reasonable claims of both parties before reforms are introduced. It is indeed not only the two contesting parties who are interested. The Madras

representative upon the subjects committee has declined to recommend the transfer of any subject in Madras unless separate provision is made for the non-Brahmans ; and though we have not been in communication with the Madras Government, it would not surprise us to learn that they share his views of the need for securing the interests of that body.

26. Various possible solutions are discussed by the committee. They reject a scheme for separate electorates on the ground that it would force the Brahmans into a separate electorate against their will. This argument may be discounted by the fact that in the eyes of many Hindus this is what has already been done in the case of the Hindus ; but hitherto separate electorates have been established in the interests of minorities only, and to extend the system in the interests of majorities seems to us again open to serious objection. On the other hand we do not think that the committee have attached enough weight to the immense power of the Brahmans in combination. They point out that the non-Brahmans will be in a majority of four to one in the electorates, and they "cannot but think that, if the capacity already devoted to politics among non-Brahmans were utilized in organizing this great majority, the non-Brahmans would in no long space of time find that such a preponderance of votes would make itself effectually felt despite the power and influence of the Brahmans." We are less optimistic. Recent experience in Madras has shown how inadequately non-Brahmans are likely to be represented in the council, unless some special provision for them is made. Numbers count for little in India at present against social, educational, and especially religious superiority which has behind it the sanction of centuries. We shall find it hard to meet the charge that we are acquiescing in the establishment of an oligarchy in Madras, unless something is done to secure to the non-Brahmans a fair share in the legislature. It would, in our opinion, be a mistake to wait for any move by the non-Brahmans. We share the committee's views regarding the undesirability of forcing a separate electorate on the Brahmans, but we are anxious to consult the Madras Government in regard to the reservation of non-Brahman seats in plural constituencies. It seems to us that the constituencies might be arranged in such a way that thirty out of the sixty-one non-Muhammadan seats could

be reserved for non-Brahmans, while both parties might contest the remaining seats without restriction.

27. At the same time, if divisions in the Hindu community are once recognised in the electorate, as in the case of the non-Brahmans in Madras, we admit that it becomes extremely difficult to resist the claims of the Mahrattas in Bombay. Their case is stated, from three different points of view in para. 5 of the Bombay Government's memorandum at pages 135-6 of the report. The Mahratta question is by no means so acute as the non-Brahman question, and the Bombay Government seem to think that with the system of plural constituencies proposed for many districts in Bombay the Mahrattas ought to secure fair representation. The case, however, is a somewhat doubtful one, and we should like to consult the Governor in Council particularly upon it before making our final recommendations.

28. We come now to the distribution of representation between town and country. The committee have not dealt with this question on any uniform system, and we cannot but think that this detracts from the value of their recommendations. The point is an important one, and as it seems to us requires reasoned treatment. After religion and race, the boundary between town and country is the greatest dividing line that runs through the Indian people. It corresponds closely with the division between progress and conservatism ; between English education and vernacular ; between experience of self-government and lack of such experience : between the existence of newspapers, professions, bar libraries, societies, etc., and their absence. It is roughly the difference between the old India and the new, the forces that are pressing us forward and those that are holding us back. These are in our view elements which ought to be measured on a uniform scale all round, and the relative importance of which ought to be assessed in each province. The committee have not attempted this task. What they have done is to accept the schemes for urban electorates put forward by provincial governments, with indifference to the fact that these are based on very varying principles. In Madras, Bombay, Bengal and the United Provinces the method adopted has been to take very large towns only and either to give them separate constituencies or to group two towns together in one constituency : at the other extreme is the system adopted in the Punjab and



# DESPATCH ON FRANCHISE COMMITTEE'S REPORT.

Bihar and Orissa of separating only one or two of the very largest towns, and then grouping all other towns, cantonments, and in the Punjab even notified areas, of one or two divisions into single constituencies : between these extremes comes the Central Provinces system of grouping towns varying in population from 46,000 to 4,000 into groups of from three to nine towns and making each group a constituency. We cannot think that all these varying principles can be sound. That their adoption will give rise to great inequalities is shown by the following statement :—

Name of provinces.	Percentage of urban seats in general, non-Muslim, Muslim and Sikh seats	Percentage of total population living in towns with population of over—				
		5,000.	10,000.	20,000.	50,000.	100,000.
1	2	3	4	5	6	7
1 Madras ...	15	16	10	6	3	2
2. Bombay ...	22	20	15	12	9	8
3. Bengal ...	23	8	6	4	3	3
4 United Provinces	14	9	7	5	4	3
5. Punjab ...	18	12	8	7	5	3
6 Bihar and Orissa	14	5	3	2	1	$\frac{1}{2}$
7. Central Provinces	18	8	5	3	1	1

In every province, whatever their differences of industrial or commercial development, there must come a stage in the growth of towns, though it need not be the same stage everywhere, where proximity of residence gives rise to distinctively urban interests. In para.133 of the reforms Report it was suggested that the beginnings of such a process occurred in towns of 10,000 people; many persons would agree that for political purposes the process was sufficiently complete in towns of 50,000 people and not in towns of much

smaller population. We would have preferred that some such standard should have been adopted in the first place, and thereafter some uniform system of weighting applied to the town representation. This would give a reasonable and a roughly uniform representation to the urban areas in the various provinces. We may illustrate our meaning by an example. If we take a population of 50,000 as the criterion for a town, and if we decide that a town population should have twice as much representation as the rural population, then accepting the percentages in column 6 of the statement above we should fix the proportion of urban representation in the various provinces as follows :—

Madras	...	...	...	6 per cent.
Bombay	...	...	...	18 "
Bengal	...	...	...	6 "
United Provinces	...	...	...	8 "
Punjab	...	...	...	10 "
Bihar and Orissa	...	...	...	2 "
Central Provinces	...	...	...	2 "

The results would be markedly different from those of the committee's method of procedure. We do not put them forward as a final solution; but we feel that the question requires more examination from the point of view of principle than it has received.

29. The committee propose certain changes in the regulations regarding the qualifications for candidates. For the reasons already given in para. 3 of this despatch we are unable to agree that subjects of Indian States should be eligible for election as members of legislative councils. We also doubt the need for the proposal that dismissal from Government service should only operate as a disqualification if it involves moral turpitude, the duty of deciding this question of fact being laid on the Governor. This proposal seems to imply that men may be dismissed from Government service without a stain on their character; this is not the case; and we would prefer to leave the disqualification as it stands at present. Our colleague Sir Sankaran Nair would accept the view of the minority stated in para. 27 of the report. The next change proposed by the committee has also reference to the same criterion. The existing provision that no one should be a candidate against whom had been passed a sentence of more than six months' imprisonment or

an order to give security for good behaviour is modified by the same "moral turpitude" condition, (though at present the Governor in Council is empowered to remove this bar), and by the omission of any reference to the preventive sections. In the following rule relating to disbarred lawyers the word "court" is substituted for authority. With the exception of the last, we do not regard these changes as improvements and should prefer to leave the rules as they stand at present. The committee, though they make no mention of the fact, further propose to omit altogether the important rule which empowers the Governor in Council to disallow the candidature of any person whose character and antecedents are such that his election would be contrary to the public interests. This rule was introduced in 1909 after much discussion between Lord Morley and Lord Minto's Government. Its loss may be inconvenient, but we are not disposed to press for its maintenance; we incline to regard a provision of this nature as inconsistent with the new conception of representation.

30. The committee's treatment of the question of residential qualifications has placed us in some difficulty. Their recommendations do not accord with the opinions received. Five local Governments asked for the insertion of a qualification of residence within the constituency, three did not press for it. The committee propose to adopt the qualification in three cases out of the five, but not in Madras or Bengal. The three English members of the committee with Indian experience dissent from the majority proposal and would adopt the qualification in all provinces. On the whole, amid this diversity of views, we have decided to accept the committee's proposals, mainly because we doubt the effectiveness of insistence on the residential qualification but also because it will give us an opportunity of testing it by results in different areas. Some of the arguments that have been urged against the qualification do not appeal to us. For example, alarm has been expressed by Indian politicians at the suggestion that rural areas may return members who will only be able to follow the proceedings in the vernacular. We feel, on the contrary, that unless this result is secured the rural areas cannot be properly represented, the control of business must pass entirely into the hands of the limited English knowing classes, and the intentions of our reforms will be in serious jeopardy. As we have said, however, we

## THE INDIAN CONSTITUTION.

are prepared to allow the experience of different provinces to show which rule has the more beneficial result

## THE INDIAN LEGISLATURE.

31. We now come to the very difficult questions connected with the composition and functions of the Indian legislature; and before we examine the committee's proposals, we would ask you to consider the main problems which must underlie all questions of detail. The principle of bifurcation in the central legislature for the sake of obtaining a better representation of interests therein, is accepted by us, though our colleague, Sir James Meston, would have frankly preferred to make no radical change in the structure of the central legislature until experience had been gained of the changes contemplated in the provinces. We all agree, however, that, be the form of the central legislature what it may, the power of the Government of India to secure the legislation which they desire in essential matters must, as stated by the authors of the Report, remain indisputable.

32. There are two ways in which a bicameral legislature can be created consistently with this cardinal requirement. The first is the method of the Report. The Council of State is there designed not primarily as a revising chamber but as the organ, when the occasion requires, of essential legislation. The idea of the authors is that the Governor-General in Council should have power, by certificate, to secure legislation that he deems essential to peace, order or good government, either through the Council of State alone in the event of a sudden emergency, or by the Council of State in disregard of the wishes of the Assembly in cases where that body had taken a line which would defeat the purpose of the legislation. Under this scheme there would indeed be provision for joint sittings at which the will of the majority would prevail; but that arrangement would not be intended for Government legislation to which there was strong non-official opposition. The figures given in para. 282 of the Report make it plain that no Government Bill which did not carry with it a substantial part of the non-official vote could succeed at a joint sitting. The Report definitely relies upon the special certificate power to secure essential legislation. It follows that if the Council of State

is as a matter of regular practice to serve when required as an effective legislature, it should comprise a strong elected element; and this the Report proposes para. 277) to provide by the method of indirect election by the non-official members of provincial councils. At the same time the authors of the Report indicate that they do not look on this position as final it is their aim that the Council of State should develop into a normal second chamber (paras. 278, 281), and they seek to give it from the outset something of this character by advising that qualifications be prescribed which will ensure a certain dignity and sobriety in its membership.

33. The other method of attaining the object in view places less reliance on the certificate power and more on the joint sitting. Its advocates doubt whether the certificate power will in practice be sufficiently elastic and durable to ensure at all times the passing of essential Government legislation. While therefore they would retain the certificate for use only in an extreme emergency, they would so constitute both chambers as to afford the Government a reasonable chance of securing enough support among the many different interests represented to carry their Bills at a joint session. So stated, the divergence of views may not appear very striking, but any departure from that part of the scheme which treats the certificate procedure as the mainstay of Government legislation at once opens the door to a very different constitutional position. There would then be good reasons for constructing India's bicameral legislature on the lines of others in the world, leaving the progressive elements to find their representation in the Assembly, and giving the Council of State the definite character of a revising chamber by making it the organ of conservative and stable opinion.

34. Between these two alternatives the main issues are fairly clear; but additional complications arise from the fact that the committee's report throws little light upon the practical possibilities of the methods of election to the Indian legislature. If the Assembly could be constituted by direct election, then the indirect election to the Council of State which the first plan involves might be accepted as no more than a minor drawback. If, however, it becomes necessary to choose the elective portion of the Assembly by indirect election, and if no better electoral colleges can be devised for it

than the non-official members of the provincial councils, then we are faced with the serious anomaly of one and the same very limited electorate choosing representatives to both chambers. When on this situation the additional limitations of the communal system are superimposed, we doubt if the resulting position would be tolerable. On the other hand if the Council of State were to be constituted on ordinary senatorial lines, it would naturally be chosen by direct election and by a restricted electorate. The nature of the elections to the Assembly, though still an important question in itself, would then at all events not complicate the question of the method of constituting the Council. The reasons for establishing direct election however for the lower chamber would indirectly gain in strength ; for it would be anomalous that the popular body should have a less direct mandate than the revising body.

35. These seem to us the governing conditions of the problem before us. As we said in para. 114 of our first despatch, the terms of reference to the franchise committee precluded them from reviewing the whole of the relevant considerations. They were not invited to consider either the functions or the composition of the Council of State, but were asked to advise on the composition of the Assembly on the assumption that the Council of State would be constituted in the manner and for the purposes proposed in the Report, and as regards the Council of State to examine only the method of election ; and this limitation must be borne in mind in considering their proposals. The committee's recommendations for the Assembly are briefly stated in para. 33 of their report. They have not referred to the proposals which we ourselves placed before them, and which are repeated in Appendix III to this despatch. We hoped to discuss our suggestions with the committee in the light of the information which they had collected in the provinces, and without which it was clearly impossible for the Government of India to formulate a complete scheme. In particular, we were anxious that the possibility of direct election to the Assembly, to which we attached great importance, should be examined in the light of the provincial figures for electorates ; but there were other questions, in particular questions of the balance of interests, on which, had time permitted, more light would have been thrown by an exchange of views. The chairman thought that nothing would be gained by a con-

# DESPATCH ON FRANCHISE COMMITTEE'S REPORT.

ference at which the Government of India were not prepared to formulate a complete scheme, he preferred to conclude his report without conferring with us, and there are therefore some points on which the reasons for the committee's divergence from our own proposals are not clear.

36. The committee have accepted our view that if all the interests which, following the plan of the Report, it is desirable to include are to find representation in the Assembly, the strength of the elective portion of that body must be raised to 78 or 80. The differences of detail between the committee's scheme and our own are exhibited in the following tables:—

## GOVERNMENT OF INDIA'S PROPOSALS.

—			General	Muslim.	European Interests.	Landholders	Indian Commerce	Sikhs.	City.	Total
Madras	..	...	9	1	1	1	..	..	...	12
Bombay	...	...	5	1	2	1	2	...	1	12
Bengal	...	...	5	3	3	1	1	...	1	14
United Provinces	...	..	8	3	1	1	...	...	...	13
Punjab	...	.	3	3	...	1	...	1	..	8
Bihar and Orissa	...	...	6	1	...	1	...	...	...	8
Central Provinces	...	...	3	..	...	1	...	...	...	4
Assam	...	...	2	...	...	...	...	...	...	2
Burma	...	...	3	...	1	...	...	...	...	4
European non-official community		com-	...	...	1	...	...	...	...	1
Total			44	12	9	7	3	1	2	78

THE INDIAN CONSTITUTION  
COMMITTEE'S PROPOSALS.

		COMMUNAL LANDHOLDERS							European Com- merce and Plant ing.		Indian Commerce		Total.
		General	Muslim	Sikh.	Non- Muslim	Muslim	Sikh						
Madras ...	...	7	2	...	1	...	...	1	1	12			
Bombay...	...	4	3	..	1	1	..	1	2	12			
Bengal ...	...	5	3	...	1	1	...	2	1	13			
United Provinces	...	6	3	...	1	1	...	1	..	12			
Punjab ...	...	2	4	1	..	1	1	...	...	9			
Bihar and Orissa	...	6	2	...	1	...	..	.	...	9			
Cential Provinces	...	4	1	...	...	...	...	...	...	5			
Assam ...	..	1	1	...	...	...	...	1	..	3			
Burma*...	...	2	1	...	...	...	...	1	...	4			
Delhi ...	...	1	..	..	...	...	...	...	...	1			
Total	..	38	20	1	5	4	1	7	4	80			

\* The allotment for Burma is only tentative.

As you will see, there is no great difference between our respective ideas of the strength of the non-special (general *plus* communal) representation but the committee have applied the Congress-League compact, which related to the Indian legislature as a whole, to the Assembly as a unit by itself, and have recommended a higher proportion of Muslim seats (24 out of 73 Indian elected seats) than our proposals, which were based on their strength in the various provinces, would give them. While the majority of us are prepared to accept their recommendation on this point, our colleague Sir William Vincent dissents, and regards the Muslim representation proposed by the committee as ex-



cessive. The special interests for which we proposed to make provision were the great landholders, European interests, Indian commerce and the two large cities of Calcutta and Bombay. The committee have omitted any special urban representation, they have not taken into account any European interests outside commerce; they have increased the representation of the landholders proposed by us from 7 to 10; they have decreased the European seats from 9 to 7 and have increased the seats given to Indian commerce from 3 to 4. It would have been convenient if they had stated their reasons. We think that the representation of landholders is excessive in itself, considering their representation in the Council of State, and that its distribution between provinces does not accord with the importance of the landed classes in them. Moreover the committee's treatment of landed property in the Assembly, where its interests are probably less immediate than in the provincial councils, is not consistent with the restricted representation which they have assigned it in the latter. We think that it would be disproportionate to reserve one elected seat to Delhi; its interests, when necessary, like those of any other minor province, could be sufficiently met by nomination. We also deprecate the reduction and restriction of the European representation. As was pointed out in His Excellency's speech which we attached to our first despatch, many of the questions which will come before the Assembly will be of great interest to European commerce, and we think that it should be strongly represented there. We feel therefore that in these respects the committee's scheme is open to criticism and we should prefer not to endorse it until we know how it is received by those affected.

37. On the important question of the method of election the committee have decided that direct election to the Assembly is impossible. The conclusion is one which we are not unanimous in accepting. Some of us consider that the results given in para. 34 of the committee's report are enough to condemn the proposal there made, and they think that closer investigation of the provincial material is required. The committee have not mentioned in their report (para. 34) whether they propose that the elections to the general and communal seats allotted to each province in the Assembly shall be made by the non-official members of that province voting as a whole, or only by those of the community concerned:

but their intentions are clear from their Appendix IX. We agree with them that the former alternative is not feasible: the Muhammadan members of the provincial councils would not wish their own representatives in the Assembly to be returned by an electorate in which the Hindus preponderate. But if the voting is to be communal, the constituencies, already so restricted that on the average eleven voters return one member, would be smaller still. In Madras, for example, 13 Muhammadan members, with the possible addition of one or two nominated members would return two members to the Assembly: in Bihar 17 Muhammadan members would elect two members; in the Punjab 9 Sikh member-electors would return one representative. A minority of us cannot regard this as a satisfactory method of constituting the elected part of the larger chamber of the new legislature of British India.

38. Those of us who take this view observe that the committee's reasons against direct election are of a permanent nature, and if accepted offer no promise of a speedy change to healthier methods. They note that the committee are in error in saying that all local Governments advised that elections should be indirect. The Bihar and Orissa Government gave an opinion to the contrary. But in any case those of us who think that every effort must be made to secure direct elections to the Assembly would be prepared to require local Governments to make a further examination of a matter which naturally was not of primary interest to them. They do not think that the committee's discussion exhausts the possibilities. The work of the central legislature will require a wider outlook and higher standard of intelligence than can be provided by the large electorate which is proposed for the provincial councils; they see no objection therefore to a substantially higher franchise being adopted for elections to the Assembly than for provincial elections; they think it inevitable that the franchise must be raised if direct elections are ever to be attained for the Assembly, and they would much prefer to take this step at once. Instead of concluding that this would give too much power to the landholders, who according to the committee would also enjoy their separate representation, they would propose first to ascertain what voters would be forthcoming on the new roll in urban and rural areas, and then to decide the details of the

## DESPATCH ON FRANCHISE COMMITTEE'S REPORT.

constituencies : it might well be that no separate seats for landholders were needed.

39. The majority of us are prepared to accept the committee's finding. We do so with regret, for we look upon direct elections as the only system that is compatible with true responsibility to the voters. And we do not accept any arguments which would relegate the creation of a direct electorate for the Assembly to an indefinite future. We consider that it will be the clear duty of the Government of India to devise such an electorate before the enquiry of the first statutory commission. But for the moment we recognize that the large electorates for the provincial councils could not be polled again for the chambers of the Indian legislature ; and it will take time to work out a separate franchise which will not be too high or very artificial or so diffused as to make canvassing impracticable. We take the committee's proposals therefore as they stand, subject to the criticisms of certain details in the foregoing paragraphs. We agree to an Assembly composed of 80 elected and 40 nominated Members, of whom 26 shall be officials ; and until the first statutory commission reports, we would allow the elected members to be chosen by the non-official members of the provincial legislatures. The nominated members we should apportion as follows :—

### *Official Members.*

Members of the Executive Council	...	...	...	7
Secretaries to the Government of India...	...	...	...	7
Provincial and departmental officials and experts	...	...	...	12
				<hr/> 26

### *Non-official Members*

...	...	14
		<hr/>
Total	...	40

40. Turning to the Council of State, the committee have recommended a slight addition to its elected element, and consequently to its total strength. In this conclusion we agree, but the main argument that weighs with us is that, unless the original proportion of size is maintained between the two bodies, the Council of State may lack the authority

which should attach to it in cases where its opinion is in opposition to the Assembly. We do not give the same weight as the committee have done to the need for nicely adjusting the claims of the provinces and the communities in the Council of State as well as in the lower chamber. They have here departed from the scheme of the Report as regards the special Muhammadan and landholder seats, and have proposed that these also shall be filled by the non-official members of the provincial councils, while Appendix X of the report shows that the elections are to follow class and communal lines. The proposal is in our view unworkable. It would allow nine Sikh electors to return a member to each chamber; and it would enable six landholder voters in the United Provinces to return a member to the Council of State at each election. We cannot approve of a scheme which yields such results. Our aim should be the representation of all important interests on a broad scale, and we should eschew refinements which really have the effect of destroying it.

41. Nor can we accept the proposals of the committee for the method of election to the Council. Whether direct election for the Assembly is impossible is a question on which, as we have said, we are not unanimous; but we all agree both that direct election to that body is strongly to be preferred, and that if it cannot be attained there is no alternative but to create new constituencies electing directly to the Council of State. To obtain the elected members of both chambers from the same electoral college would reduce the smaller chamber—the Council of State—to a position barely distinguishable from that of a standing grand committee of the Assembly. We are anxious that the Council should partake of the character of a hall of elder statesmen; and for that purpose we should make its membership subject to a high standard of qualification. Having gone so far, we should see no difficulty in advancing a step further and providing for each province and electorate of from 1,000 to 1,500 voters, possessed of the same qualifications as those which we should prescribe for membership of the Council of State, who should be required to elect to that body from among their own number. The details would vary between provinces, and it would of course be necessary to consult local Governments upon them. There is ample time before the first elections for these special rolls to be prepared, and we

# DESPATCH ON FRANCHISE COMMITTEE'S REPORT.

recommend that the inquiry should be to this extent reopened.

42. Assuming therefore that the Assembly is enlarged our provisional proposals as regards the Council of State would take the following form —

Elected by restricted constituencies in .—

Madrás, Bombay, Bengal, the United Provinces and the Punjab (3 each)	15
Bihar and Orissa, Burma and the Central Provinces (2 each.)	6
Assam	1
Elected by Chambers of Commerce	2
Total elected members...	24
Nominated non-official members ...	4
Official members—	
Members of the Executive Council	7
Secretaries to the Government of India	10
Provincial and departmental officials	11
Total	28
Grand Total	56

In allowing for communal interests, we should reserve for Muhammadans one seat in each of the provinces which have three seats, and one seat alternately in Bihar and Orissa and in the Central Provinces. One of the Punjab seats we should keep for Sikhs.

43. The question remains whether the officials appointed to the Council of State should be approximately the same as those nominated to the Assembly or not. It would not be easy for the provinces to spare a double set of senior officials for the comparatively prolonged sessions of the Indian legislature; nor if the certificate power is freely used would the presence of so many be necessary for the purposes of joint sessions. There are also advantages in having the same officials in touch with the proceedings in both chambers; and although in practice it will mean that the two chambers

cannot sit at the same time, we advise that the same officials should as far as possible be members of both.

44. We should the more regret our inability to present you at this stage with a complete scheme, to which local Governments had assented, if we did not feel that it arises from causes wholly beyond our control, and that there is yet an opportunity for further investigation. The extreme difficulty of combining the security of Government in essential matters with the need for greater representation of interests is apparent and calls for no demonstration. The strength of the official element available for the legislative purposes of the central Government is limited, and in the long run, if we are to adhere, as we wish to do, to the fundamental principles of the reforms Report, it must be the ultimate determining factor in whatever dispositions we make. For the rest, our aim should be to give the greatest scope to the representative principle and to make the business of the Indian legislature a reality to the electorate, and the best hope of doing so lies in establishing a system of direct election to both chambers. We recognize that this is at the moment impracticable, but for the upper or senatorial chamber we advise that the attempt be made. It can be done without delay, and there is no reason to fear that it will impede the introduction of reforms.

### *Conclusion.*

45. We have now to sum up our views upon the committee's report. We think that it will serve the immediate purpose of making clear to Parliament the general scope of the electorate which it will be possible to set up in India; the play which must be allowed to the principles of communalism and special interests; and the size and composition of the resulting legislative bodies in the provinces. Whatever changes may be made on points of detail, important as some of these are, will not impair the value of the report from these points of view. At the same time we feel that there are proposals in the report, as for instance those affecting the depressed classes, the non-Brahmins, the Muslims, the landlords, and the division of urban and rural areas that we cannot without further inquiry endorse; while we desire more investigation into the constitution of the Indian legisla-

## DESPATCH ON FRANCHISE COMMITTEE'S REPORT

ture and the method of election for the Council of State. There is time for such inquiry and our recommendation therefore is that the report with this despatch be published, and the opinions of local Governments and of the public generally be obtained upon them.

46. Our Colleague, Sir Sankaran Nair, is of opinion that, in view of Indian political conditions, any invitation of further public criticism in India is to be deprecated. He would, without waiting for further discussion in India, leave to the authorities in England, who will no doubt give such opportunities as they think fit to local Governments and representative bodies to make their representations, the decision of all questions, including those affecting the depressed classes, non-Brahmins, etc., on which he has differed from the franchise committee, and the other questions, like the composition of the Legislative Assembly and the Council of State, if any, etc., on which the Government of India are unable to endorse the conclusions of the committee without further enquiry. He signs this despatch subject to the minute of dissent already submitted by him.

47. Our Colleague Sir William Vincent has stated his views upon the questions of Muhammadan representation and the Indian legislature in a separate minute of dissent.

We have the honour to be,

SIR,

Your most obedient, humble Servants,

(Signed) CHELMSFORD.

„ C. C. MONRO.

„ C. SANKARAN NAIR.

„ G. R. LOWNDES.

„ W. H. VINCENT.

„ J. S. MESTON.

„ T. H. HOLLAND.

„ R. A. MANT.

## XIV. Report of the Marquess of Crewe's Committee on the Home Administration of Indian Affairs.

1. The Committee was appointed to enquire into the organisation of the India Office and the relations between the Secretary of State in Council and the Government of India. We were directed to have regard generally to the proposals made in the Report on Indian Constitutional Reforms for the reform of the Government of India and provincial Governments, and in particular to the recommendations contained in paragraphs 290 to 295 of the Report.

2. Our terms of reference were as follows :—

(1) To advise what changes should be made in—

- (a) the existing system of Home administration of Indian affairs ; and in
- (b) the relations between the Secretary of State, or the Secretary of State in Council, and the Government of India, both generally and with reference to relaxation of the Secretary of State's powers of superintendence, direction, and control.

(2) To examine in particular—

- (a) the constitutional powers of the Council of India, its relation to the Secretary of State as affecting his responsibility to Parliament, and otherwise, and the financial and administrative control exercised by the Council ;
- (b) the composition of the Council, the qualifications, method of appointment and term of office of its members, and the number of Indian members ;
- (c) the working of the Council in relation to Office procedure ;
- (d) the general departmental procedure of the India Office ;
- (e) the organisation of the India Office establishment, and the question of modifying the system of its recruitment so as to provide for—



REPORT OF THE MARQUESS OF CREWE'S COMMITTEE.

- (i) the interchange of appointments with the Indian Services, and
- (ii) the throwing open of a proportion of appointments to Indians, and to make recommendations.

(3) To advise whether any of the charges on account of the India Office, and if so what charges, should be placed along with the Secretary of State's salary upon the Estimates.

(4) To advise how effect should be given, by legislation or otherwise, to the Committee's recommendations.

(5) To enquire into and report upon any other matters cognate or relevant to the above, which it may consider expedient to take into consideration.

3. At the outset of our proceedings we felt a certain difficulty regarding matters of military administration, which on a strict view might be held as falling within the scope of our enquiry. We were in doubt whether it was contemplated that these matters should be included among the problems which the Committee was constituted to investigate; and we therefore sought and obtained a ruling that they could be omitted from our consideration.

4. In the interpretation of Head I. of our terms of reference, we have designed our work to be complementary to that already completed by the two Committees which have reported under Lord Southborough's presidency on the new franchise and the allotment of functions. In order to present on a reasoned basis our conception of the functions to be discharged in the future by the Home administration of India, we have found it necessary to assume something as to the functions to be assigned to the Government of India; and with this object in view we have accepted as our starting-point the conclusions of the Committee on Functions, in so far as they indicate the relations between the central and local Governments in India.

5. We desire to record our regret that Lord Inchcape was prevented by illness from joining the Committee. We feel that his wide experience and sound judgment would have been an invaluable help to us in our deliberations.

6. The Committee assembled at the India Office on the 5th March 1919. In all, we have held 33 meetings and

examined 20 witnesses, whose names are given in the appendix to this Report. The nature of the evidence taken was determined to a considerable extent by the necessity of eliciting the facts of the existing system. As it was clear that our conclusions might materially affect the status of the Council of India, we thought it right to give the members individually an opportunity of placing their view before us. In addition, we have had the great advantage of hearing Mr. Austen Chamberlain, in whose term of service at the India Office the scheme of Indian Reform had its inception.

## II.

7. We have set constantly before us the declared policy of His Majesty's Government, namely, "the gradual development of self-governing institutions, with a view to the progressive realisation of responsible government in India as an integral part of the British Empire." To make clear our position in regard to the changes which in our opinion should be made in the system of the Home Administration of Indian affairs in order to achieve the end in view, it will not be out of place to recall briefly the steps in evolution which have tended to differentiate the India Office in some important respects from other Government departments.

8. There is much in the existing system which has its origin in arrangements suited to the control by the East India Company of its commercial operations in a distant land. These operations led to the exercise by the Company of governmental powers, in regard to which Parliament from an early date asserted its supremacy. The interaction of the two forces had by 1858 produced a constitution which may shortly be described as follows:—The executive management of the Company's affairs was in the hands of a Court of Directors, who were placed in direct and permanent subordination to a body representing the British Government and known as the Board of Control. The functions of the Board were in practice exercised by the President, who occupied in the Government a position corresponding to some extent to that of a modern Secretary of State for India. The Board of Control were empowered "to superintend, direct and control all acts, operations, and concerns which in anywise relate to the civil or military government or revenues

of the British territorial possessions in the East Indies" (24 Geo. III., sess. 2, c. 25). Subject to the superintendence of the Board of Control, the Directors conducted the correspondence with the Company's officers in India, and exercised the rights of patronage in regard to appointments.

9. The transference of the administration of India to the Crown in 1858 was effected by the Act for the Better Government of India (21 & 22 Vict., c. 106), which has regulated the Home administration of India since that year, and of which the main provisions were re-enacted in the consolidated Government of India Act, 1915-16. In general, the dual functions of the Board of Control and the Court of Directors were vested in the corporate body known as the Secretary of State for India in Council. The substitution of administrative responsibility on the part of the Government for the superintendence it had formerly exercised caused a redistribution of functions in which the lines of inheritance became to some extent obscured, but the persistence of the dual principle can still be traced in the corporate activities of the Secretary of State in Council.

10. "The Secretary of State has and performs all such or the other like powers and duties relating to the government or revenues of India, and has all such or the like powers over all officers appointed or continued under this Act, as if the Government of India Act, 1858, had not been passed, might or should have been exercised or performed by the East India Company, or by the Court of Directors \* \* \* either alone or by the direction or with the sanction or approbation of the Commissioners for the Affairs of India" (*i.e.*, the Board of Control), "in relation to that government or those revenues and the officers and servants of that Company, and also all such powers as might have been exercised by the said Commissioners alone." (Government of India Act, 1915-16, section 2 (1).)

11. The functions assigned to the Council of India were in some respects derived from [the position previously held by the Court of Directors. Under the direction of the Secretary of State, and subject to the provisions of the Act, they "conduct the business transacted in the United Kingdom in relation to the Government of India and the correspondence with India." But at the same time

they were given a special function, which was presumably intended to act as a counterpoise to the centralisation of powers in the hands of the Secretary of State. In regard to certain decisions, and notably in regard to "the grant or appropriation of any part of" the revenues of India, the concurrence of a majority of votes at a meeting of the Council of India is required. This provision, usually referred to as the financial veto, has, not without reason, been regarded as the symbol of the special status assigned to the Council in its relationship with the Secretary of State. It is emphasised, though in a lesser degree, by the enactment that in all other matters, with two exceptions, the Secretary of State must consult his Council either at a weekly meeting or by the formal procedure of depositing his proposed orders on the Table of the Council Room for seven days prior to their issue, though he is empowered to overrule the Council's recommendations. The two exceptions are, first, that in cases of urgency he may issue orders without previously consulting the Council, provided that he subsequently communicates to the members his reasons for his action; and secondly, that "where an order or communication concerns the levying of war, or the making of peace, or the public safety, or the defence of the realm, or the treating or negotiating with any prince or State, or the policy to be observed with respect to any prince or State, and a majority of votes therefor at a meeting of the Council of India is not required," the Secretary of State may act on his own initiative without reference to the Council, if he considers that the matter is of a nature to require secrecy. Our description of the statutory functions of the Secretary of State and the Council of India is designedly brief, because we feel that the enumeration of legal powers and safeguards can only create a very inadequate impression of the actual principles which have been evolved in the working of the system. There are some elements which, as we have tried to show, have been derived from the days of a chartered company yielding more and more to Parliamentary control, and others which were grafted on to the structure at the time when Parliament assumed complete responsibility through its Ministerial representative; but the whole organism has been moulded by the instinctive process of adaptation to a form which does not lend itself easily to definition in set constitutional terms. We are content for our purposes

to envisage the system in its present working and in its reaction to the new conditions of Indian administration.

12. The Council consists of from ten to fourteen members each appointed for seven years, of whom nine at least must have served or resided in British India for ten years and must not have left India more than five years previously to their appointment. It is in the main a body differing in status but not in nature from the authorities in India whose activities come under its review. The Secretary of State in Council represents in fact the supreme element of expert control at the higher end of the chain of official administration. In his corporate capacity he has delegated wide powers to the Indian administrations without divesting himself of his ultimate responsibilities as the governing authority. The main provisions of the Act of 1858, as we understand them, had the effect of giving prominence to these official duties of the corporation it established. But the Secretary of State, as distinct from the Secretary of State in Council is generally responsible as a Minister for the co-ordination of Indian and Imperial policy. The Council are by law in a position to obstruct his policy, or indeed the policy of His Majesty's Government, by interposing their financial veto if Indian revenues are affected ; but in practice they have acknowledged the supremacy of the Imperial Executive by accepting proposals communicated to them as decisions of the Ministry, in so far as those proposals raise issues on which they are legally competent to decide. We mention this demarcation of functions, to which we shall revert, to illustrate the way in which the hard outlines of legal definition have been rounded off by constitutional usage. But we are more immediately concerned at present with the collective functions of the Secretary of State in Council in their relation to the Government of India. And in that relation the governing body was designed to assert an active supremacy. All measures, administrative, financial and legislative, of the authorities in India are referred to it for examination and decision, except in so far as by general or special orders it has delegated powers of sanction. Delegation has been carried out largely as a matter of expediency, with the direct object of increasing administrative efficiency ; it has not implied, and has not been intended to imply, any radical change in the respective functions of the authorities between whom it has

taken place. The Secretary of State in Council retains the ultimate authority as the head of the system ; and we have now to see how far the conception of graduated official control—tempered, it may be, at various stages by the advice of representatives of the people—can be adapted to the principle of popular responsibility which is to be introduced.

### III.

13. The features which typify the Reforms Scheme are the transfer of some subjects of administration from officers of the Crown to representatives of the people in the provinces, and the encouragement in the Indian legislature of an authoritative expression of popular opinion to which the governments will become increasingly responsive. Simultaneously with these developments a systematic delegation of powers, which, indeed, has long been felt to be desirable in the interests of efficiency, is contemplated in order that the free influence of the new forces may not be blocked at the outset by some survival of the system they are intended eventually to supplant. Leaving on one side for the present the provincial aspects, we proceed to discuss the effects of the scheme on the Government of India, where, it will be remembered, there is no transfer of subjects but a marked enlargement of popular representation. The new constitution of the Indian Legislative Assembly, which will give to the non-official members a substantial majority, is bound to make its weight felt with the Government of India. The problem with which we are immediately concerned is to secure that the opinion of the Assembly should carry corresponding weight with the authorities in whom is vested the power of controlling the Government of India. It appears to us that the conception of the Reforms Scheme leads naturally to the acceptance of the principle, which we here state in general terms, that where the Government of India find themselves in agreement with a conclusion of the Legislative Assembly, their joint decision should ordinarily prevail. We set out below what we conceive to be the application of the principle to the main divisions of governmental functions.

14. First as regards legislation. At the outset, we think it desirable to secure that the authority of the Legislative

Assembly will not be restricted by Government intervention through the Council of State save on the direct instructions of the Secretary of State. The authors of the Joint Report lay down that the special procedure is to be applied only in three cases : first, where a Bill is passed by the Legislative Assembly in a form which imperatively requires amendment ; secondly, where the Assembly refuses leave to the introduction of a Bill which the Government regard as necessary, or throws out the Bill at any stage ; and thirdly, where in cases of emergency the consideration of a measure by both Chambers would take too long if the emergency which calls for the measure is to be met. On each occasion the Governor-General in Council must certify that the required amendments, or the provisions of the Bill as presented to the Assembly, are essential to the interests of peace, order or good government. Following the phraseology of the Joint Report, we recommend that the Governor-General should be instructed that save in the case of absolute necessity no measure should be certified for enactment by the Council of State without previous approval of its substance by the Secretary of State on the ground that the legislation proposed is essential in the interests of the peace, order, and good government of India. We note that the words employed in clause 20 (4) of the Government of India Bill, regarding certification by the Governor-General in Council, are "the safety, tranquillity, or interests of British India or any part thereof," which appear to be of somewhat wider import than those in the Joint Report.

15. In normal cases, where legislation comes before the Secretary of State, it must already have received the assent of the Governor-General, and must have been passed by a majority of votes in the Council of State and in the Legislative Assembly. But inasmuch as there is a substantial official vote in the latter body and normally an official majority in the former, it follows that the measure has not necessarily the support of a majority, of the non-official members in either Chamber. In order, therefore, to give proper emphasis to the legislative authority of the Assembly, we recommend that whenever legislation has the support of a majority of the non-official members of the Legislative Assembly, assent should be refused only in cases in which the Secretary of State feels that his responsibility to Parliament for the peace, order, and good

government of India, or paramount considerations of Imperial policy, require him to secure reconsideration of the matter at issue by the Legislative Assembly. We would complete our conception of the status to be assigned to Indian legislation by a further suggestion. It appears to us that the exercise of the Governor-General's statutory duties in regard to Acts of the Indian Legislature, as defined in section 68 of the Government of India Act, might suitably be regulated by definite principles laid down for his guidance in an instrument of instructions issued in His Majesty's name. Effect might be given to the suggestion by amending section 68 so as to read "the Governor-General may declare, *according to his discretion but subject to His Majesty's instructions*, that he assents to the Bill, or," etc.

16. In examination of the Budget, and in criticism of general administration, the Legislative Assembly can express its views only by means of resolutions ; and these will continue to be advisory in character, without legal sanction. The Government may accept a resolution either because they agree with it from the outset, or because they decide to defer to the opinion of the Assembly. Where for any reason reference to the Secretary of State is considered necessary, we recommend that a joint decision of the Government of India and a majority of the non-official members of the Assembly, reached by discussion of a resolution, should be given the same degree of authority as similar decisions on legislative proposals, and that the principle we have stated in paragraph 15 should be applied in these cases also.

17. We now revert to the question of delegation, considered as a supplementary aspect of the scheme of Reform. We are in full sympathy with the opinion expressed by the authors of the Joint Report, that previous sanction to decisions taken in India should be required in fewer cases than in the past, and that in some matters it will suffice in future if the Secretary of State asserts his control by means of a veto if necessary. Delegation of powers is so much a matter of technical detail that we consider our function to be confined to the duty of laying down guiding principles for its regulation. The basis of delegation that we recommend is as follows : that without prejudice to the further relaxation of control by the Secretary of State, the principle of previous consultation between the Secretary of State and the Govern-



ment of India should be substituted in all cases where the previous sanction of the Secretary of State in Council has hitherto been required ; but the Secretary of State should from time to time revise the list of subjects on which he requires such previous consultation, and inform the Government of India accordingly. Our recommendations would apply to all projects, both legislative and financial, subject to the reservations that may be necessary for the proper discharge of the Secretary of State's Ministerial responsibilities. In regard to administrative questions as distinct from those involving legislation or finance, the special need for delegation in the sense applied above does not arise. The administrative powers of the Government of India in this respect are not limited by any formal restrictions ; but as a matter of constitutional practice, reference to the Home authorities is of course made on what are understood to be specially important administrative matters. It is clear that that practice should be continued under the new system. We think it unnecessary to say more on this head than that the degree of discretion allowed in matters of pure administration should be enhanced in general correspondence with the wider authority to be allowed in future in matters of legislation and finance. As regards the general principle we have suggested, we assume that consultation would be real and effective in the sense that the Secretary of State would receive ample notice of the Government of India's proposals and that a full understanding between London and Delhi would be reached by a free interchange of views.

18. We have stated our conclusions as to the extent to which the co-operative authority of the Government of India and the Legislative Assembly should be recognised, and the corresponding degree in which revision from Home should by constitutional practice be limited. As regards Local Governments, we have considered it to be beyond our province to explore the possible lines of devolution from the central to the local administrations which might eventually affect the Secretary of State's relations with the latter bodies. Developments in this respect are likely to vary according to the initial disparity and the different rates of progress exhibited in the several provinces ; and we are reluctant to commit ourselves to a general forecast which the future might show to be not only vain but misleading. Consequently, in con-

sidering the relationship between the Secretary of State and Provincial Governments, we feel precluded from making any series of explicit suggestions which events might prove to be unworkable or possibly obstructive to reform. For the inauguration of the new system, the conclusions of the Committee on Functions afford in our opinion of sufficient guide to the relationship we have to consider ; and we assume that during the earlier stages, at any rate, the Government of India will in the main continue to act as the intermediary between the Secretary of State and Local Governments. On that basis, it appears to us to follow from our general reasoning that in so far as provincial action comes under the cognisance of the Secretary of State, either directly or through the Government of India, he should regulate his intervention with regard to the principle which we have sought to apply to the working of the central Government namely, that where the Government find themselves in agreement with a conclusion of the legislature, their joint decision should ordinarily be allowed to prevail.

19. We have been unable to make a full examination of the position of the Secretary of State in regard to the Civil Services in India ; and we must content ourselves with recording our recognition of the weight of the views expressed by the authors of the Joint Report in their treatment of the matter. We desire that the recommendations in paragraphs 15 and 16 of the present Report should be read as subject to the necessary reservations.  
 case

#### IV.

20. In approaching the main subject of our enquiry, we have necessarily dwelt on certain aspects of the Reforms Scheme on the Indian side, in order to throw into relief the changes in the Home Administration to which they point. The conditions of reform obviously postulate a change of atmosphere in the conduct of administration by the supreme executive ; but it is in our view clear that to complete the structure at this end the need for something more than a change of atmosphere is imperative. We have endeavoured to show that the existing conception is that of graduated official control, amenable in some respects to popular advice, but in broad outline extending in an unbroken series from

the subordinate executives in India to the Secretary of State in Council. That series is no longer to be maintained in India, and we cannot justify the retention of its essential features in London. In so far as the new co-operation between the Government of India and representatives of the people finds effective expression in the manner we have indicated, and in so far as obstacles to further expansion are removed by a wide delegation of powers from home, the case for expert control breaks down. Equally to mark the disappearance of official control from the expert standpoint at home, and to establish the undivided responsibility to Parliament of the Secretary of State, we advocate as our first principle the abandonment of the corporate idea of the Secretary of State in Council. Our recommendation is, therefore, that the powers and authority with regard to the Government of India now vested in the Secretary of State in Council should be transferred to the Secretary of State, the date of transfer to be determined by Order of His Majesty in Council. We presume that an Order giving effect to our recommendation, if it is accepted, would be issued as an immediate consequence of the passing of the Government of India Bill into law. It is unnecessary, we trust, to explain that our conclusion implies no failure on our part to appreciate the great services rendered by the Council of India in the place they have hitherto filled in the scheme of Indian administration. It will also be superfluous to labour the subsidiary reasons which have helped us to form our judgment, if we have succeeded in making our main argument clear.

21. Our recommendation has not been made without a close regard to the consequences which will follow if it is carried into effect. In the first place, we have satisfied ourselves that there is no constitutional function of the Secretary of State in Council which could not equally well, under the new conditions, be discharged by the Secretary of State. We propose that he should retain the statutory position described in the words quoted in the earlier part of this Report, and should modify it by whatever process of constitutional growth appears to him best to fit the circumstances. Our second consideration is one of practical expediency. We have distinguished in regard to the Secretary of State two spheres of action: one in which he has hitherto exercised in Council

executive functions which henceforward, in our view, he will leave more and more to the Government of India acting in co-operation with the Legislative Assembly, and the other in which he will retain Ministerial control. The latter presents no difficulty ; the supremacy of the Imperial Government must of course remain unquestioned. In the former case, the position would be equally clear if the Government of India were constitutionally amenable to the will of the Assembly. But we must bear in mind that that state of affairs is not yet in view. The Secretary of State will still have to decide on a number of questions, on many of which he will not wish to invoke the full authority of the Cabinet. If in such matters he finds himself compelled to overrule the Government of India, he will be likely to incur the charge of ignoring, on his own personal initiative, the collective weight of trained administrative judgment. We have also to remember the variety and complexity of Indian problems. The solution that we propose is to provide him with a collective body of continuous and expert advice. We have no doubt whatever that, in the absence of such a body, the Secretary of State would take the fullest possible opportunity of securing in various quarters consultation of the most valuable kind. But the advice he would obtain would always remain informal, and the special difficulty of his position would not be met. The body that we suggest would be established on a statutory basis, with a fixed tenure of office, and its composition would be designed to afford the Secretary of State the kind of advice called for by the circumstances which we hold to justify its creation.

22. An alternative scheme as regards the relations between the Government of India and the Home Administration has been put forward by our colleague, Sir James Brunyate, who has elaborated it in the statement appended to this Report. Briefly, his position as regards the Council of India, as we understand it, is that its retention, while it may not be defensible at some future stage when the Government of India have come more completely under the control of popular representatives in India, is proportionately defensible in so far as that Government remain an executive wholly responsible to the Secretary of State. During this period he would retain the Council of India as the normal complement to the Government of India, with its existing

statutory powers other than the right of financial veto, but with definite limitations of its area of functions. As the focus of the Government of India's responsibility shifted from the Secretary of State to the Legislative Assembly, the need for the corporate control of the Secretary of State in Council would lapse. We have given careful consideration to the proposal, and we desire to say that it was fully in accordance with our wishes that Sir James Brunyate has placed it on record as an alternative to our recommendations. We reiterate, however, our opinion that the present is the most opportune time, both for political and constitutional reasons, for marking the inception of the Reforms by a definite and unmistakable change in the Home Administration of India.

23. As regards the functions of the body that we propose should be established, we would mark its distinction from its predecessor by the provision that the Secretary of State should refer such matters as he may determine to the Committee for its advice and assistance, and may provide by regulations for the manner in which the business of the Committee may be conducted. There need, however, in our opinion, be little apprehension that its activities will be desultory, or that the tender of advice will not be regulated by clear and consistent principles. The substitution, for example, of previous consultation between the Secretary of State and the Government of India for the previous sanction of the Secretary of State in Council indicates one line of work which would naturally come before such a Committee. It would thus in all probability develop a routine which will doubtless take over much of the technique evolved in the long term of the Council's existence, though without some of the statutory prescriptions as to procedure which are found to be inconvenient. We anticipate that it will prove useful to retain the principle of discussion in subcommittees, in order to provide the continuous basis of collective advice, particularly on technical matters, which has proved so helpful in the Committees of the Council of India, and which was endorsed in regard to finance by the high authority of the Royal Commission on Indian Finance and Currency which reported in 1914.

24. The functions we have outlined for the Advisory Committee will naturally determine its composition. We

propose that the number of members should be fixed by statute at not more than twelve and not less than six ; that the members should be appointed, as in the case of the Council of India, by the Secretary of State, and that subject to the provision suggested below in regard to a minimum of Indian members, he should have full discretion in his selection. The knowledge to which he would turn in the Advisory Committee would be that most naturally supplied by members with recent official experience in India, and we contemplate that with the reservation just named the majority of the Committee will possess such a qualification. In these cases we do not consider it advisable to incur the risk of limiting the field of appointment by making statutory the requirement laid down in subsection (3) of section 3 of the Government of India Act as to the qualification of recent service or residence in India in the case of nine members of the Council of India. We assume as a matter of course that the Committee would include a certain number of Indian gentlemen. The new conditions appear to us to accentuate the desirability of securing the services of some Indian members who would be accepted in India as truly representing Indian political thought. To this end we recommend that not less than one-third of the members of the Committee should be persons domiciled in India selected by the Secretary of State from a panel of names submitted by the non-official members of the Indian Legislative Assembly and the Council of State. We consider that a statutory provision to this effect would be appreciated in India as signalling the spirit of co-operation between the Secretary of State and representative elements of Indian public opinion. Our recommendation leaves it open to appoint Indians representing special interests, or possessing administrative experience, in addition to those selected from the panel.

25. We recommend that the tenure of office of all members should be fixed by statute at five years. We consider that this period represents a tenure which would be sufficiently attractive to men of high administrative qualifications, and at the same time would afford the Secretary of State the full benefit of the members' experience, while ensuring that that experience should be reasonably in touch with current Indian conditions. There would, however, be an understanding that an Indian member would not necessarily

bind himself, by accepting appointment to the Committee, to remain in office for the full term of service. In our opinion, provisions for the re-appointment, resignation, and removal of members, which are given statutory expression in section 3 (5), (6), and (7) of the Act, might more conveniently be met by rule-making powers. We think, however, that section 4, which provides that no member of the Council of India shall be capable of sitting or voting in Parliament, should be amended so as to apply to members of the Advisory Committee. Our reason is that the close connection which we contemplate the members will have with the administration of the Secretary of State is incompatible with the duties of a member of either House of Parliament, and that combination of the two functions might in practice be found to lead to grave inconvenience. On full consideration of the status of the Committee and of the nature of the work which the members will be called upon to perform, we recommend that the salary of each member should be 1,200*l.* a year. We propose that all Indian members, in view of the fact of their domicile, should receive a subsistence allowance of 600*l.* a year in addition to the salary of 1,200*l.*<sup>1</sup>.

26. We make two further suggestions which find a natural place at this stage of our exposition, although they are not directly dependent on the disappearance of the Council of India. The first is, that the signification of His Majesty's assent to reserved Bills of the Indian Legislature and of the local legislatures should be made by His Majesty in Council, instead of through the Secretary of State in Council as hitherto, and should be notified by the Secretary of State to the Governor-General, and that the disallowance of Acts of the Indian and local legislatures, and of Regulations and Ordinances, should similarly be signified by His Majesty in Council. We should explain that we make this suggestion irrespective of our conclusion as to the Council of India, in order to mark the new status of Indian legislation; but for the sake of clearness we have preferred to state it after our proposals for the remodelling of the Home Administration, as it directly implies a small modification of the existing system.

27. Our second suggestion is that the Secretary of State should regulate by executive orders the mode of conduct of

<sup>1</sup> These figures are reckoned on a pre-war basis.

correspondence between the India Office and the Government of India and Local Governments. The issue of orders and communications has hitherto been regulated by the somewhat meticulous procedure prescribed by the Act of 1858, and we do not think we need justify our proposal to liberate the India Office from the restrictions imposed by a bygone age and to place it on the same footing as other Government Departments in this respect. There may be other portions of the existing Act to which the spirit of this recommendation would equally be applicable.

28. To sum up in brief our recommendations : we propose the transfer of responsibility from the Secretary of State in Council to the Secretary of State, and the establishment of an Advisory Committee of from six to twelve members, appointed by the Secretary of State, of whom not less than one-third should be Indians selected from a panel of names submitted by the non-official members of the Indian Legislature ; members of either House of Parliament to be ineligible for appointment to the Committee ; the tenure of office to be fixed at five years, and the salary at 1,200*l.* a year, with an additional allowance of 600*l.* a year in the case of members domiciled in India. The statutory changes which appear to us to be entailed by our recommendations are as follows. For section 3 of the Government of India Act, 1915-16, would be substituted a clause providing for the establishment of the Advisory Committee. Sections 5 to 14 inclusive would be omitted, and section 21 would terminate with the words "shall be subject to the control of the Secretary of State." The words "Secretary of State in Council" would be replaced by the words "Secretary of State," with any other consequential alterations throughout the remainder of the Act, and throughout the Government of India Bill which is now before Parliament.

## V.

29. We proceed to the subsidiary heads of our enquiry, of which the first is the organisation of the India Office establishment. We have interpreted this reference to imply that we should indicate general lines of reconstruction, without entering into technical questions of departmental arrangements. We are satisfied that the time has come for a demarcation



between the agency work of the India Office and its political and administrative functions, and that the step would commend itself to all classes of opinion in India as marking a stage towards full Dominion status. Accordingly, we recommend that preliminary action should be taken with a view to the transfer of all agency work to a High Commissioner for India or some similar Indian Governmental representative in London. We suggest that, in the first instance, communications should be entered into with the Government of India with the object of transferring to the direct control of that Government the Stores Department and also the Accountant-General's Department (subject to any necessary reservations, including the retention of work connected with higher finance), and that the Government of India should at the same time be invited to make suggestions for the transfer to their control of any other agency business, such as that transacted by the Indian Students Department.

30. As regards modifications in the system of the recruitment of the higher administrative staff of the India Office, we find difficulty in adopting a suggestion which appears in the Joint Report, that as one alternative the India Office staff might be recruited from the Indian Civil Service. One serious objection is that a preliminary period of training, undergone in India before the new recruit enters on his duties at the India Office, though it would undoubtedly give his work the initial stimulus of local and freshly-felt experience, would inevitably have to be general and somewhat indefinite in character, and would tend to lose the usefulness of its effect just at the time when he would begin to take a responsible part in the administrative work of the Office. Our general attitude towards the question is governed by the fact that authoritative Indian experience will be represented in the Advisory Committee, and will not be supplemented on the same plane by members of the permanent establishment. We draw a clear distinction between the advice tendered to the Secretary of State collectively by a body of the status we have in view and that submitted to him individually by his subordinates. In the case of the latter, we regard personal knowledge of Indian conditions as a valuable adjunct rather than as an essential qualification. The evidence before us has indicated the great value of bringing the superior officers of the Home and the Indian Administrations into close touch

with each other under daily working conditions, and we presume that the system of deputing these officers, on special duty and with definite objects, from one country to the other will be continued and possibly expanded. So far, we have been dealing more particularly with the case of members of the India Office staff. As regards members of the Indian Services, the position is easier. The terms of leave and deputation from India make them more readily available for interchange; they are not hampered in any special sense by ignorance of local conditions; and experience has already proved, in the temporary adjustment of the India Office staff to war conditions, that they can be employed in the Office with success. The widening of their experience in regard to the political and Parliamentary functions of the Home Administration and its relations with other Departments cannot fail to be of very considerable value. At the same time we fully realise that the work of the Home Administration requires a special outlook and a special technique which can only be acquired by a continuous training under the traditions of the Home Service. For this reason, and also to avoid the effect of discouragement on the permanent staff recruited at Home, we would deprecate any systematic reservation of higher appointments in the India Office for members of the Indian Services. To sum up our conclusions, we are of opinion that it is desirable that from time to time the Secretary of State should depute members of the India Office staff on special duty in India, whenever convenient opportunities present themselves; and should also employ officers of the Indian Services, or non-officials versed in Indian administration, in the superior work of the India Office, but ordinarily on a temporary footing or as supplementary to the permanent establishment. We do not, however, think that it is desirable or possible to arrange any formal system of interchange between members of the India Office and the Indian Services.

31. We can readily understand the aspiration of Indians to be admitted to a more intimate part in the Home Administration of Indian affairs. In considering how best to provide a legitimate opening, we have to bear in mind that representative Indian opinion will find its place on the Advisory Committee, and that the permanent staff requires certain qualifications of a kind to which we have already

referred. Administrative efficiency, no doubt, will be progressively forthcoming among the Indians who will be available for employment at the India Office under the general scheme of interchange that we have outlined above, and we anticipate that full opportunity will be taken to utilise their services freely with those of the British representatives of administrative work in India. We do not consider, however, that it would be in the best interests of the Indian Empire to create special facilities, whereby appointments in the ordinary administrative line of the India Office might be claimed as a matter of privilege by Indians not necessarily possessing the qualifications which would enable them to gain access to the Office through the channels we have already indicated. There is, nevertheless, a special force in the argument that Indians should be able to take their place in the higher control of the Office, as distinct from the advisory functions of the proposed Committee. We are of opinion that it would be advantageous if occasion were now and then taken to appoint an Indian to one of the posts which stand as intermediary between the Secretary of State and the Heads of Departments, and we should be willing to see an additional appointment of this kind created, to be filled by an Indian, provided that there were other grounds which could reasonably be held to justify such an addition to the establishment.

32. We have now to consider what alteration should be made in the present system under which the whole of the charges on account of the India Office are payable from Indian revenues. We understand that it is the intention of His Majesty's Government that the salary of the Secretary of State should, like that of all other Ministers of the Crown, be defrayed from Home revenues and voted annually by Parliament. Our main principles have already led us to distinguish the political and administrative duties of the Secretary of State, acting as a Minister, from the agency business conducted by the India Office on behalf of the Indian authorities. It appears to follow as a general conclusion that the charges incidental to the former should be met from British revenues. They form a normal part of the cost of Imperial administration, and should in equity be treated similarly to other charges of the same nature. We include under this head the charges on account of the Advisory Committee, which is constituted to assist the Secretary of

State in the performance of his Ministerial responsibilities. Charges on account of agency work would naturally continue to be borne by India, in whose interests they are incurred. The exact apportionment is clearly a matter of technical detail which is best left for settlement between the India Office and the Treasury. The principle that we would lay down is that, in addition to the salary of the Secretary of State, there should be placed on the Estimates (a) the salaries and expenses (and ultimately pensions) of all officials and other persons engaged in the political and administrative work of the Office, as distinct from agency work; (b) a proportionate share, determined with regard to the distinction laid down in head (a), of the cost of maintenance of the India Office; the exact sum payable under heads (a) and (b) to be determined by agreement between the Secretary of State and the Lords Commissioners of the Treasury from time to time. Any arrangement made under this scheme would supersede the adjustment agreed to between the India Office and the Treasury as a result of the recommendations of the Royal Commission on Indian Expenditure, over which Lord Welby presided. The India Office building and site and other similar property paid for in the past by Indian revenues, and now held by the Secretary of State for India in Council, would continue to be Indian property. The statutory change necessary to give effect to our recommendation is provided in clause 22 of the Government of India Bill.

33. In considering in their new aspect the functions of the Secretary of State, more particularly in regard to his Parliamentary responsibilities, we have not been able to leave out of account the proposal made in the Joint Report for the appointment of a Select Committee of the House of Commons on Indian affairs. The object of the Select Committee is stated to be to ensure in Parliament a better-informed and more sustained interest in India, and its composition is to be limited to the House of Commons, on the ground that it is in that House that effective control over Indian administration will, in the view of the authors of the Report, be exercised by means of the debate on the Estimates. We are of opinion that these objects would not be furthered by the appointment of a Select Committee. We do not believe that such a step would usefully contribute towards the creation of a well-informed opinion on Indian affairs. Members of the House of

Commons are already overburdened by the heavy and ever-increasing duties in connection with Home affairs, to which their constituents not unnaturally expect them to give priority. If Parliamentary interest in India is focussed in a Select Committee, effective discussion and control might be confined within even narrower limits than at present, and criticism of Indian administration from the independent standpoint will indirectly be discouraged. But in any case we feel that the proposal is open to a far more fundamental objection. We believe that the appointment of such a body might encourage a tendency to interfere in the details of Indian administration, and that the result might militate against the modification of control which it is the object of the Reforms to secure. In fact, we hold that the argument for a Select Committee, however strong it might have been in the past, inevitably loses weight in proportion as India progresses towards responsible government.

34. As it is clear that the form of the Home Administration of Indian affairs should not be given a greater rigidity than the forms of government which are to be granted in India as the first step towards full responsibility, we assume that the statutory commission of enquiry will include within the scope of their review the range of subjects with which we have dealt in our Report.

## VI.

35. For convenience of reference we summarise our recommendations as follows :

### *Relations between the Home and Indian Administrations.*

(i) Save in the case of absolute necessity, legislation should not be certified for enactment by the Council of State without previous approval of its substance by the Secretary of State on the ground that its enactment is essential in the interests of the peace, order, and good government of India (para. 14).

(ii) Where the Government of India are in agreement with a majority of the non-official members of the Legislative Assembly, either in regard to legislation or in regard to resolutions on the Budget or on matters of general administration, assent to their joint decision should only be withheld in cases

in which the Secretary of State feels that his responsibility to Parliament for the peace, order and good government of India, or paramount considerations of Imperial policy, requires him to secure reconsideration of the matter at issue by the Legislative Assembly (paras. 15, 16).

(iii) As a basis of delegation, the principle of previous consultation between the Secretary of State and the Government of India should be substituted in all cases in which the previous sanction of the Secretary of State in Council has hitherto been required (para. 17).

(iv) In the relations between the Secretary of State and Local Governments, the principle should as far as possible be applied, that where the government are in agreement with a conclusion of the legislature, their joint decision should ordinarily be allowed to prevail (para. 18).

(v) Assent to, or disallowance of, Indian legislation by the Crown should be signified by His Majesty in Council (para. 26.)

*The Home Administration of India.*

(vi) The powers and authority now vested in the Secretary of State for India in Council should be transferred to the Secretary of State (para. 20).

(vii) The Secretary of State should be assisted by an Advisory Committee, to which he shall refer such matters as he may determine; and he may provide by regulations for the conduct of business of the Committee (paras. 21, 23).

(viii) The Advisory Committee should consist of not more than twelve and not less than six members, appointed by the Secretary of State (para. 24).

(ix) Not less than one-third of the members of the Committee should be persons domiciled in India selected by the Secretary of State from a panel of names submitted by the non-official members of the Indian Legislature (para. 24).

(x) The tenure of office of members of the Committee should be five years (para. 25).

(xi) Members of either House of Parliament should be ineligible for appointment to the Committee (para. 25).

(xii) The salary of members of the Committee should be 1,200*l.* a year (para. 25).<sup>1</sup>

(xiii) Indian members of the Committee should receive a subsistence allowance of 600*l.* a year in addition to salary, in respect of their domicile (para. 25).<sup>1</sup>

(xiv) Statutory provision should be made for recommendations (vi) to (xiii) inclusive.

(xv) The Secretary of State should regulate by executive orders the conduct of correspondence between the India Office and the Governments in India (para. 27.)

*The Organisation of the India Office Establishment.*

(xvi) Action should be taken with a view to the transfer of the agency work of the India Office to a High Commissioner for India or some similar Indian Governmental representative in London (para. 29).

(xvii) No formal system of interchange of appointments between members of the India Office and the Indian Services can be recommended ; but deputation between the two countries should be encouraged (para. 30).

(xviii) Occasion should be taken now and then to appoint an Indian to one of the posts intermediary between the Secretary of State and Heads of Departments (para. 31).

*The Appointment of the Charges of the India Office  
between Home and Indian Revenue.*

(xix) The charges on account of the political and administrative work of the Office should be placed on the Estimates, those on account of the agency work of the Office being defrayed from Indian revenues, the apportionment to be determined by agreement between the India Office and the Treasury (para 32).

(xx) The Committee are not in favour of the proposal to establish a Select Committee of the House of Commons on Indian Affairs (para. 33.)

36. Our colleagues Sir James Brunyate and Professor Keith find themselves unable, for the reasons stated in the

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<sup>1</sup> These figures are reckoned on a pre-war basis.

memoranda which they append respectively to this Report, to agree with us in our main conclusions. They have been good enough, however, to place at our disposal the valuable benefit of their assistance in framing our Report, and we desire to record our indebtedness to them for their ready co-operation and for many helpful suggestions which have greatly contributed towards a clearer statement of our objects and proposals. Mr. Basu's views also differ in some material parts, and he prefers to state them in a separate note. Mr. Gosling was prevented by pressure of other work from taking part in the consideration of the Report.

37. We desire also to acknowledge the valuable aid rendered by our Secretary, Mr. W. R. Gourlay, C.I.E., I.C.S., Private Secretary to the Governor of Bengal, and to express our thanks to Lord Ronaldshay for his ready consent to our retaining Mr. Gourlay's services through the summer. He was ably assisted by Mr. S. K. Brown, of the India Office, whose special experience was of great value to us in considering the working of the India Office and its relations with the Government of India. We cannot speak too highly of the assiduity and capacity displayed by both these gentlemen during the conduct of the enquiry and also in the preparation of this Report.

CREWE.

AGA KHAN.

ESHER.

G. P. COLLINS.

G. E. MURARY.

W. ORMSBY-GORF.

W. R. GOURLAY,  
*Secretary.*

*June 1919.*



## **XV. Report of the Joint Select Committee of the House of Lords and the House of Commons.**

### **ORDERED TO REPORT.**

1. That the Committee have met and considered the said Bill and taken the evidence of a large number of witnesses, many of whom had come all the way from India for the purpose. A mass of telegrams and other communications has also been received. The list of witnesses and the telegrams have been printed as an appendix to the evidence. Written representations have not as a rule been printed. The Committee appreciate the advantage they have derived from being placed in full possession of the views of many persons who have given much thought to the political future of the country.

2. The Committee were not charged, as some have seemed to think, with the task of reporting on the state of India, or on the conduct of the administration in India, or even at large on the best form of Government for India, but only with the duty of dealing with this Bill, which had been read a second time in the House of Commons, according to the well-known forms of Parliamentary procedure and with the rules and conventions arising out of it.

3. In the declaration made by His Majesty's Government on the 20th August, 1917, there is enunciated the problem for which the Bill endeavours to provide a solution. It is to design the first stage in a measured progress towards responsible government. Any such stage, if it is to be a real advance, must, as the Committee conceive it, involve the creation of an electorate, and the bestowal of some share in the work and responsibilities of government on those whom the electorate chooses to represent its interests. In the present circumstances of India, the electorate must at the outset be small and the administrative experience of its representatives must be limited. Before, therefore, the policy of His Majesty's Government can be fulfilled the electorate must grow, and practical experience in the conduct of public affairs must be enlarged. During this period the guardianship of the peace of India cannot be withdrawn from the care of the official agency which Parliament at present charges with the

duties of the administration and the Committee regard it to be an essential feature of the policy of His Majesty's Government that, except in so far as he is released from responsibility by the changes made under this Bill, the Governor-General-in-Council should remain in undisturbed responsibility to Parliament and fully equipped with the necessary powers to fulfil that responsibility. But from the beginning the people must be given an opportunity, and all political wisdom points to its being a generous opportunity, of learning the actual business of government and of showing, by their conduct of it, to some future Parliament that the time has come for further extensions of power.

4. In the opinion of the Committee the plan proposed by the Bill is conceived wholly in this spirit, and interprets the pronouncement of the 20th August, 1917, with scrupulous accuracy. It partitions the domain of provincial government into two fields, one of which is made over to ministers chosen from the elected members of the provincial legislature while the other remains under the administration of a Governor-in-Council. This scheme has evoked apprehensions which are not unnatural in view of its novelty. But the Committee, after the most careful consideration of all suggested alternatives, are of opinion that it is the best way of giving effect to the spirit of the declared policy of His Majesty's Government. Its critics forget that the Announcement spoke of a substantial step in the direction of the gradual development of self-governing institutions with a view to the progressive realisation of responsible government and not of the partial introduction of responsible government; and it is this distinction which justifies the method by which the Bill imposes responsibility, both on Ministers to the legislative council and on the members of the legislative council to their constituents, for the results of that part of the administration which is transferred to their charge.

5. Having weighed the evidence and information before them, the Committee have made a number of changes in the Bill. Those of a more detailed or miscellaneous character are briefly discussed below under the clauses to which they relate. Those which are directed to the avoidance of the difficulties and dangers which have been pointed out, proceed on a simple and, in the Committee's opinion, an indefeasible theory. That theory the Committee think it desirable to

## REPORT OF THE JOINT SELECT COMMITTEE.

state at once. Ministers who enjoy the confidence of a majority in their legislative council will be given the fullest opportunity of managing that field of government which is entrusted to their care. In their work they will be assisted and guided by the Governor, who will accept their advice and promote their policy whenever possible. If he finds himself compelled to act against their advice, it will only be in circumstances roughly analogous to those in which he has to override his executive council—circumstances which will be indicated in the Instrument of Instructions furnished to him on his appointment by His Majesty. On the other hand, in and for that field of government in which Parliament continues to hold him responsible, the provincial Governor-in-Council will remain equipped with the sure and certain power of fulfilling that responsibility. The Committee will indicate in the course of this Report how they visualise the relations between the two parts of the provincial government, but they wish to place in the forefront of the Report their opinion that they see no reason why the relations should not be harmonious and mutually advantageous. They regard it as of the highest importance that the Governor should foster the habit of free consultation between both halves of his government, and indeed that he should insist upon it in all important matters of common interest. He will thus ensure that ministers will contribute their knowledge of the people's wishes and susceptibilities, and the members of his Executive Council their administrative experience, to the joint wisdom of the government. But while the Committee anticipate much advantage from amicable and, as far as possible, spontaneous association for purposes of deliberation, they would not allow it to confuse the duties or obscure the separate responsibility which will rest on the two parts of the administration. Each side of the government will advise and assist the other ; neither will control or impede the other. The responsibility for administrative and legislative action in their own field will be fixed beyond possibility of doubt on ministers and on the majorities of the provincial legislatures which support them ; and they will be given adequate power to fulfil their charge. Similarly within that field for which he remains accountable to Parliament, the responsibility for action must be fixed on the Governor-in-Council, and he must possess unfailing means for the discharge of his duties.

Finally, behind the provincial authorities stands the Government of India.

6. The change which this Bill will make in the political structure and life of India is very important. It marks a great step in the path of self-government, and it is a proof of the confidence reposed by His Majesty's Government in the loyalty, wisdom and capacity of our Indian fellow-subjects. At the same time it points to the desirability of keeping Parliament in closer touch with Indian affairs than has recently been possible. The Committee accordingly propose that a Standing Joint Committee should be appointed by both Houses of Parliament for that purpose. It should have no statutory functions, but a purely advisory and consultative status; and among its task is one of high importance, the consideration of amendments to rules made under this Bill. For the plan on which the Bill has been drafted, and in the opinion of the Committee rightly drafted will necessitate the completion of some of its main provisions by a large number of rules and other documents which will have to be framed before the machinery established by the Bill can come into working order. Many of these rules and documents will be drafted in India for the approval of the Secretary of State. When they come to England, it may be found convenient that the present Committee be re-appointed to advise Parliament in regard to them.

7. The Committee will now proceed to indicate the nature of the changes they have made in the Bill, and also their suggestions for actions to be taken under it, either in the framing of rules or by executive process hereafter.

#### PREAMBLE.

The Preamble of the Bill, as drafted, was based on the Announcement of His Majesty's Government in Parliament of the 20th August, 1917, and it incorporated that part of the Announcement which pointed to the progressive realisation of responsible government in British India as an integral part of the Empire, and to the expediency of gradually developing self-governing institutions in India, and it referred to the granting to the Provinces of India of a large measure of independence of the Government of India. It did not,

## REPORT OF THE JOINT SELECT COMMITTEE.

however, deal with those parts of the Announcement which spoke of the increasing association of Indians in every branch of the administration, and declared that the progress of this policy could only be achieved by successive stages, and that Parliament, advised by his Majesty's Government and by the Government of India, on whom the responsibility lies for the welfare and advancement of the Indian people, must be the judge of the time and measure of each advance, and be guided by the co-operation received from those upon whom new opportunities of service are conferred and by the extent to which it is found that confidence can be reposed in their sense of responsibility.

The Committee have enlarged the preamble so as to include all parts of the Announcement of the 20th August, 1917. Their reason for doing so is that an attempt has been made to distinguish between the parts of this Announcement, and to attach a different value to each part according to opinion. It has been said, for instance, that whereas the first part is a binding pledge, the later part is a mere expression of opinion of no importance. But the Committee think that is of the utmost importance, from the very inauguration of these constitutional changes, that Parliament should make it quite plain that the responsibility for the successive stages of the development of self-government in India rests on itself and on itself alone, and that it cannot share this responsibility with, much less delegate it to, the newly-elected legislatures of India.

They also desire to emphasize the wisdom and justice of an increasing association of Indians with every branch of the administration, but they wish to make it perfectly clear that His Majesty's Government must remain free to appoint Europeans to those posts for which they are specially required and qualified.

### PART I.

*Clause 1.*—The Committee wish to take this opportunity of acknowledging the debt they owe to the work of the two Committees on Franchise and Functions presided over by Lord Southborough. If they are not able to accept all the conclusions of these Committees, and if they recommend some

additional provisions to those included in those reports, it does not mean that they are not very sensible of the value of the work done, without which, indeed, this constitutional change could not have been effected.

The lists of central, provincial and transferred subjects included in the Functions Committee's report have been somewhat altered after consultation with the India Office (*see* Appendix F to the *Minutes of Evidence*) and as so amended they are accepted by this Committee, subject to certain general observations at the end of this Report. It must not, however, be concluded that these partitions of the functions of government are absolutely clear-cut and mutually exclusive. They must in all cases be read with the reservations in the text of the Functions Committee's report, and with due regard to the necessity for special procedure in cases where their orbits overlap.

The Committee have given much attention to the difficult question of the principle on which the provincial revenues and balances should be distributed between the two sides of the provincial governments. They are confident that the problem can readily be solved by the simple process of common sense and reasonable give-and-take, but they are aware that this question might, in certain circumstances, become the cause of much friction in the provincial government, and they are of opinion that the rules governing the allocation of these revenues and balances should be framed so as to make the existence of such friction impossible. They advise that, if the Governor, in the course of preparing either his first or any subsequent budget, finds that there is likely to be a serious or protracted difference of opinion between the executive council and his ministers on this subject, he should be empowered at once to make an allocation of revenue and balances between the reserved and transferred subjects, which should continue for at least the whole life of the existing legislative council. The Committee do not endorse the suggestion that certain sources of revenue should be allocated to reserved, and certain sources to transferred subjects, but they recommend that the Governor should allocate a definite proportion of the revenue, say, by way of illustration, two-thirds to reserved and one-third to transferred subjects, and similarly a proportion, though not necessarily the same fraction, of the balances. If the Governor desires assistance

## REPORT OF THE JOINT SELECT COMMITTEE.

in making the allocation, he should be allowed at his discretion to refer the question to be decided to such authority as the Governor-General shall appoint. Further, the Committee are of opinion that it should be laid down from the first that, until an agreement which both sides of the Government will equally support has been reached, or until an allocation has been made by the Governor, the total provisions of the different expenditure heads in the budget of the province for the preceding financial year shall hold good.

The Committee desire that the relation of the two sides of the Government in this matter, as in all others, should be of such mutual sympathy that each will be able to assist and influence for the common good the work of the other, but not to exercise control over it. The budget should not be capable of being used as a means for enabling ministers or a majority of the legislative council to direct the policy of reserved subjects ; but on the other hand the executive council should be helpful to ministers in their desire to develop the departments entrusted to their care. On the Governor personally will devolve the task of holding the balance between the legitimate needs of both sets of his advisers.

*Clause 2*—This clause has been inserted to regularise the raising of loans by local governments on the special security of their own provincial revenues.

*Clause 3*.—The question has been raised as to the communications between the Governors of provinces and the Secretary of State. The question as to whether such communications shall in future take place, and as to the procedure to be adopted in them, may well be left to the Secretary of State. In the opinion of the Committee there is no cause at present for disturbing the existing position, except to the extent to which the Secretary of State relaxes his powers of direction and control over local governments. To that extent the Government of India will also withdraw from intervention ; but India is not yet ripe for a true federal system, and the central government cannot be relegated to functions of mere inspection and advice. The Committee trust that there will be an extensive delegation, statutory and otherwise, to provincial governments of some powers and duties now in the hands of the Government of India ; and they trust also that the control of that Government over provincial matters

will be exercised with a view to preparing the provinces for the gradual transfer of power to the provincial government and legislature.

*Clause 4.*—The Committee are of opinion that the ministers selected by the Governor to advise him on the transferred subjects should be elected members of the legislative council, enjoying its confidence and capable of leading it. A minister will have the option of resigning if his advice is not accepted by the Governor ; and the Governor will have the ordinary constitutional right of dismissing a minister whose policy he believes to be either seriously at fault or out of accord with the views of the legislative council. In the last resort the Governor can always dissolve his legislative council and choose new ministers after a fresh election ; but if this course is adopted the Committee hope that the Governor will find himself able to accept such views as his new ministers may press upon him regarding the issue which forced the dissolution. The Committee are of opinion that in no province will there be need for less than two ministers, while in some provinces more will be required. In these circumstances they think that it should be recognised from the commencement that ministers may be expected to act in concert together. They probably would do so , and in the opinion of the Committee it is better that they should and therefore that the fact should be recognised on the face of the Bill. They advise that the status of ministers should be similar to that of the members of the executive council, but that their salaries should be fixed by the legislative council. Later on in this Report it will be suggested that Indian members of the Council of India in London should be paid a higher scale of remuneration than those members of the Council domiciled in the United Kingdom. The same principle might suggest to the legislative council that it was reasonable for the ministers of the provincial government domiciled in India to be paid on a lower scale of remuneration than the European members.

Provision has been made in this clause for the appointment, at the Governor's discretion, of non-official members of the legislative council to fill a role somewhat similar to that of the Parliamentary Under-Secretary in this country.

*Clause 5.*—The Committee are of opinion that the normal strength of an executive council, especially in the smaller



## REPORT OF THE JOINT SELECT COMMITTEE.

provinces, need not exceed two members. They have not, however, reduced the existing statutory maximum of four; but if in any case the council includes two members with service qualifications, neither of whom is by birth an Indian, they think that it should also include two unofficial Indian members.

*Clause 6.*—The Committee desire at this point to give a picture of the manner in which they think that, under this Bill, the government of a province should be worked. There will be many matters of administrative business, as in all countries, which can be disposed of departmentally, but there will remain a large category of business, of the character which would naturally be the subject of Cabinet consultation. In regard to this category the Committee conceive that the habit should be carefully fostered of joint deliberation between the members of the executive council and the ministers, sitting under the chairmanship of the Governor. There cannot be too much mutual advice and consultation on such subjects; but the Committee attach the highest importance to the principle that, when once opinions have been freely exchanged and the last word has been said, there ought then to be no doubt whatever as to where the responsibility for the decision lies. Therefore, in the opinion of the Committee, after such consultation, and when it is clear that the decision lies within the jurisdiction of one or other half of the Government, that decision in respect of a reserved subject should be recorded separately by the executive council, and in respect of a transferred subject by the ministers, and all acts and proceedings of the government should state in definite terms on whom the responsibility for the decision rests. It will not always, however, be clear, otherwise than in a purely departmental and technical fashion, with whom the jurisdiction lies in the case of questions of common interest. In such cases it will be inevitable for the Governor to occupy the position of informal arbitrator between the two parts of his administration; and it will equally be his duty to see that a decision arrived at on one side of his government is followed by such consequential action on the other side as may be necessary to make the policy effective and homogeneous.

The position of the Governor will thus be one of great responsibility and difficulty, and also of great opportunity and honour. He may have to hold the balance between divergent

policies and different ideals, and to prevent discord and friction. It will also be for him to help with sympathy and courage the popular side of his government in their new responsibilities. He should never hesitate to point out to ministers what he thinks is the right course or to warn them if he thinks they are taking the wrong course. But if, after hearing all the arguments, ministers should decide not to adopt his advice, then, in the opinion of the Committee, the Governor should ordinarily allow ministers to have their way, fixing the responsibility upon them, even if it may subsequently be necessary for him to veto any particular piece of legislation. It is not possible but that in India, as in all other countries, mistakes will be made by ministers, acting with the approval of a majority of the legislative council, but there is no way of learning except through experience and by the realisation of responsibility.

In the debates of the legislative council members of the executive council should act together and ministers should act together, but members of the executive council and ministers should not oppose each other by speech or vote ; members of the executive council should not be required to support either by speech or vote proposals of ministers of which they do not approve, nor should ministers be required to support by speech or vote proposals of the executive council of which they do not approve ; they should be free to speak and vote for each other's proposals when they are in agreement with them. All other official members of the legislative council should be free to speak and vote as they choose.

*Clause 7.*—The Committee have altered the first schedule to the Bill, so as to show only the total strength of the legislative council in each province. They have retained the provision, now in sub-clause (2) that at least 70 per cent. of the members shall be elected, and not more than 20 per cent. shall be officials. This general stipulation will govern the distribution of the seats in each province ; but in certain respects the detailed arrangements will require further consideration, and proposals should be called for from the Government of India in regard to them. The points in question, as well as some disputable matters on which the Committee wish to endorse the proposals of the Franchise Committee's report, are dealt with in the following recommendations :—

(a) The Committee regard the number of seats allotted

## REPORT OF THE JOINT SELECT COMMITTEE.

to the rural population, as distinct from the urban, as disproportionately low and consider that it should receive a larger share of representation. They also think that an attempt should be made to secure better representation of the urban wage-earning class, and they are convinced that an effort should be made to remedy in part at least the present disparity between the size of the electorates in the different provinces. In all those matters no definite instructions need be given. The Government of India should be left a wide discretion in adjusting the figures, subject, however, to the understanding that the adjustment should be effected in all cases rather by enlargement than by diminution of the representation proposed in the Franchise Committee's report.

(b) The Committee are of opinion that the representation proposed for the depressed classes is inadequate. Within this definition are comprised, as shown in the report of the Franchise Committee, a large proportion of the whole population of India. They think that the Government of India should, as it advises, be instructed to give such classes a larger share of representation by nomination, regard being had to the numbers of depressed classes in each province, and after consultation with the Local Governments. This representation should, if necessary, be in addition to, but not in diminution of, the general electorate. Whenever possible, other persons than members of the Civil Services should be selected to represent the depressed classes, but if a member of those services, specially qualified for this purpose, has to be appointed, his nomination should not operate to increase the maximum ratio of official seats.

(c) In the Madras Presidency the Committee consider that the non-Brahmins must be provided with separate representation by means of the reservation of seats. The Brahmins and non-Brahmins should be invited to settle the matter by negotiation among themselves, and it would only be, if agreement cannot be reached in that way, that the decision should be referred to an arbitrator appointed for the purpose by the Government of India.

(a) The Committee would recommend that similar treatment be accorded to the Mahrattas in the Bombay Presidency.

(e) The question whether women should or should not be admitted to the franchise on the same terms as men

## THE INDIAN CONSTITUTION

should be left to the newly elected legislative council of each province to settle by resolution. The Government of India should be instructed to make rules so that, if a legislative council so voted, women might be put upon the register of voters in that province. The Committee have not felt able to settle this question themselves, as urged by the majority of witnesses who appeared before them. It seems to them to go deep into the social system and susceptibilities of India, and, therefore, to be a question which can only, with any prudence be settled in accordance with the wishes of Indians themselves as constitutionally expressed.

(f) The Committee are of opinion that the franchise as settled by the rules to be made under this Act should not be altered for the first ten years, and that it should at present be outside the power of the Legislative Councils to make any alteration in the franchise. The recommendation, therefore, in respect of woman suffrage, is to be regarded as altogether exceptional, and as not forming any precedent in respect of proposals for other alterations.

(g) The special representation of landholders in the provinces should be reconsidered by the Government of India in consultation with the local governments.

(h) The franchise for the University seats should be extended to all graduates of over seven years' standing.

(i) The Government of India should be instructed to consult with the Government of Bengal in respect of the representation of Europeans in Bengal. It appears to the Committee that there are good reasons for a readjustment of that representation. The recommendations of the report of the Franchise Committee in respect of European representation in other provinces may be accepted.

(j) The question whether the rulers and subjects of Indian States may be registered as electors or may be elected to the legislative councils should be left to be settled in each case by the local government of the province.

(k) The Committee are of opinion that dismissal from the service of the government in India should not be a disqualification for election, but that a criminal conviction entailing sentence of more than six months' imprisonment should be a disqualification for five years from the date of the expiration of the sentence.

## REPORT OF THE JOINT SELECT COMMITTEE.

(l) The compromise suggested by the Franchise Committee in respect of the residential qualification of candidates for legislative councils whereby the restriction was to be imposed only in the provinces of Bombay, the Punjab, and the Central Provinces may be accepted.

(m) The recommendations of the Franchise Committee in respect of the proportionate representations of Moham-medans, based on the Lucknow compact, may be accepted.

Two further observations must be made on this question of franchise. It seems to the Committee that the principle of proportional representation may be found to be particularly applicable to the circumstances of India, and they recommend that this suggestion be fully explored, so that there may be material for consideration by the Statutory Commission when it sits at the end of ten years. Further it has been strongly represented to the Committee, and the Committee are themselves firmly convinced, that a complete and stringent Corrupt Practices Act should be passed and brought into operation before the first elections for the legislative councils. There is no such Act at present in existence in India, and the Committee are convinced that it will not be less required in India than it is in other countries.

*Clause 9*—The Committee have considered carefully the question who is to preside over the legislative councils in the provinces. They are of opinion that the Governor should not preside, and they advise that, for a period of four years, the President should be appointed by the Governor. Wherever possible it would be a great advantage if someone could be found for this purpose who had had parliamentary experience. The legislative council should itself elect a Vice-President, and at the end of four years the nominated President would disappear, and the President and Vice-President would be elected by the councils. The Committee attribute the greatest importance to this question of the Presidency of the legislative council. It will, in their opinion, conduce very greatly to the successful working of the new councils if they are imbued from the commencement with the spirit and conventions of parliamentary procedure as developed in the Imperial Parliament. The Committee will recur to this subject in dealing with the question of the President of the Legislative Assembly of India.

*Clause 11.*—The Committee think that the provincial budget should be submitted to the vote of the legislative council, subject to the exemption from this process of certain charges of a special or recurring character which have been set out in the Bill. In cases where the council alter the provision for a transferred subject, the Committee consider that the Governor would be justified, if so advised by his ministers, in re-submitting the provision to the council for a review of their former decision ; but they do not apprehend that any statutory prescription to that effect is required. Where the council have reduced a provision for a reserved subject which the Governor considers essential to the proper administration of the subject concerned, he will have a power of restoration. The Committee wish it to be perfectly clear that this power is real and that its exercise should not be regarded as unusual or arbitrary ; unless the Governor has the right to secure supply for those services for which he remains responsible to Parliament, that responsibility cannot justly be fastened upon him.

Whenever the necessity for new taxation arises, as arise it must, the questions involved should be threshed out by both parts of the Government in consultation together, and it is especially important that in this matter both parts of the Government should, if possible, be in agreement when the proposals of the Government are laid before the legislature.

*Clause 13.*—The Committee have rejected the plan of Grand Committees as drafted originally in the Bill. They have done so because in their opinion the Grand Committee did not give the Governor the power of securing legislation in a crisis in respect of those matters for which he is held responsible, and because in respect of ordinary legislation about reserved subjects it perpetuated the system of securing legislation by what is known as the "official bloc," which has been the cause of great friction and heartburning. The responsibility for legislation on reserved subjects is with the Governor in Council, and, when the "official bloc" has been put into operation, it has been put into operation by him, and is merely an indirect way of asserting his responsibility. The Committee think it much better that there should be no attempt to conceal the fact that the responsibility is with the Governor in council and they recommend a process by which the Governor should be empowered to pass an Act in respect of

## REPORT OF THE JOINT SELECT COMMITTEE.

any reserved subject, if he considers that the Act is necessary for the proper fulfilment of his responsibility to Parliament. He should not do so until he has given every opportunity for the matter to be thoroughly discussed in the legislative council, and as a sensible man he should, of course, endeavour to carry the legislative council with him in the matter by the strength of his case. But, if he finds that cannot be so, then he should have the power to proceed on his own responsibility. Acts passed on his sole responsibility should be reserved by the Governor-General for His Majesty's pleasure, and be laid before Parliament. His Majesty will necessarily be advised by the Secretary of State for India, and the responsibility for the advice to be given to His Majesty can only rest with the Secretary of State. But the Committee suggest that the Standing Committee of Parliament, whose appointment they have advised, should be specially consulted about Acts of this character. Provision, however, is made in the Bill for the avoidance of delay in case of a grave emergency by giving the Governor-General power to assent to the Act without reserving it, though this of course would not prevent subsequent disallowance by His Majesty in Council.

*Clause 15.*—The Committee have two observations to make on the working of this Clause. On the one hand, they do not think that any change in the boundaries of a province should be made without due consideration of the views of the legislative council of the province. On the other hand, they are of opinion that any clear request made by a majority of the members of a legislative council representing a distinctive racial or linguistic territorial unit for its constitution under this Clause as a sub-province or a separate province should be taken as a *prima facie* case on the strength of which a commission of inquiry might be appointed by the Secretary of State, and that it should not be a bar to the appointment of such a commission of inquiry that the majority of the legislative council of the province in question is opposed to the request of the minority representing such a distinctive territorial unit.

## PART II.

*Clause 18.*—As will be explained below, the Committee do not accept the device, in the Bill as drafted, of carrying government measures through the Council of State without

reference to the Legislative Assembly, in cases where the latter body cannot be got to assent to a law which the Governor-General considers essential. Under the scheme which the Committee propose to substitute for this procedure, there is no necessity to retain the Council of State as an organ for government legislation. It should therefore be reconstituted from the commencement as a true Second Chamber. They recommend that it should consist of sixty members, of whom not more than twenty should be official members. The Franchise Committee advise that the non-official members should be elected by the same group of persons as elect the members of the Legislative Assembly and in the same constituencies. This is a plan which the Committee could, in no circumstances, accept. They hope and believe that a different system of election for the Council of State can be devised by the time the constitution embodied in this Bill comes into operation, and they recommend that the Government of India be enjoined forthwith to make suggestions accordingly, to which effect can be given without delaying the inauguration of the new constitution. If the advice of the Committee that it be re-appointed for the purpose of considering the rules to be framed under this Bill be approved, it should have an opportunity of considering the proposals made for the election of the Council of State.

*Clause 19.*—For the Legislative Assembly the Committee are equally unwilling to accept, as a permanent arrangement, the method of indirect election proposed in the report of the Franchise Committee. If by no other course it were possible to avoid delay in bringing the constitution enacted by the Bill into operation, the Committee would acquiesce in that method for a preliminary period of three years. But they are not convinced that delay would be involved in preparing a better scheme of election, and they endorse the views expressed by the Government of India in paragraph 39 of its despatch dealing with the subject. They accordingly advise that the Government of India be instructed at once to make recommendations to this effect at the earliest possible moment. These recommendations as embodied in draft rules would also be subject to examination by this Committee if re-appointed.

*Clause 20.*—The Committee think that the President of the Legislative Assembly should for four years be a person



## REPORT OF THE JOINT SELECT COMMITTEE.

appointed by the Governor-General. He should be qualified by experience in the House of Commons and a knowledge of parliamentary procedure, precedents, and conventions. He should be the guide and adviser of the Presidents of the provincial councils, and he should be chosen with a view to the influence which it is hoped he would have on the whole history of parliamentary procedure in India. He should be paid an adequate salary.

*Clause 25.*—This is a new provision for the submission of the Indian Budget to the vote of the Legislative Assembly, on the understanding that this body is constituted as a chamber reasonably representative in character and elected directly by suitable constituencies. The Committee consider it necessary (as suggested to them by the consolidated fund charges in the Imperial Parliament) to exempt certain charges of a special or recurring nature, which have been set out in the Bill, *e.g.*, the cost of defence, the debt charges and certain fixed salaries, from the process of being voted. But otherwise they would leave the Assembly free to criticise and vote the estimates of expenditure of the Government of India. It is not, however, within the scheme of the Bill to introduce at the present stage any measure of responsible government into the central administration, and a power must be reserved to the Governor-General in Council of treating as sanctioned any expenditure which the Assembly may have refused to vote if he considers the expenditure to be necessary for the fulfilment of his responsibilities for the good government of the country. It should be understood from the beginning that this power of the Governor-General in Council is real, and that it is meant to be used if and when necessary.

*Clause 26.*—For reasons which prompted their rejection of the process of certification by a Governor to a grand committee in a province, the Committee are opposed to the proposals in the Bill which would have enabled the Governor-General to refer to the Council of State, and to obtain by virtue of his official majority in that body, any legislation which the lower chamber refuses to accept, but which he regards as essential to the discharge of his duties. The Committee have no hesitation in accepting the view that the Governor-General in Council should in all circumstances be fully empowered to secure legislation which is required for

the discharge of his responsibilities ; but they think it is unworthy that such responsibility should be concealed through the action of a Council of State specially devised in its composition to secure the necessary powers. They believe that in such a case it would add strength to the Government of India to act before the world on its own responsibility. In order, however, that Parliament may be fully apprised of the position and of the considerations which led to this exceptional procedure, they advise that all Acts passed in this manner should be laid before Parliament, who would naturally consider the opinion of the standing committee already referred to.

*Clause 28.*—The recommendation of the Committee is that the present limitation on the number of the members of the Governor-General's Executive Council should be removed, that three members of that Council should continue to be public servants or ex-public servants who have had not less than ten years' experience in the service of the Crown in India ; that one member of the Council should have definite legal qualifications, but that those qualifications may be gained in India as well as in the United Kingdom ; and that not less than three members of the Council should be Indians. In this connection it must be borne in mind that the members of the Council drawn from the ranks of the public servants will, as time goes on, be more and more likely to be of Indian rather than of European extraction.

*Clause 29.*—The Committee have inserted this provision to allow of the selection of members of the legislature who will be able to undertake duties similar to those of the Parliamentary Under-Secretaries in this country. It should be entirely at the discretion of the Governor-General to say to which departments these officers should be attached, and to define the scope of their duties.

### PART III.

*Clause 30.*—The Committee think that all charges of the India Office, not being "agency" charges, should be paid out of moneys to be provided by Parliament.

*Clause 31.*—The Committee are not in favour of the abolition of the Council of India. They think that, at any rate for some time to come, it will be absolutely necessary that the

## REPORT OF THE JOINT SELECT COMMITTEE.

Secretary of State should be advised by persons of Indian experience, and they are convinced that, if no such Council existed, the Secretary of State would have to form an informal one, if not a formal one. Therefore, they think it much better to continue a body which has all the advantages behind it of tradition and authority, although they would not debar the readjustment of its work so as to make it possible to introduce what is known as the portfolio system. They think, also, that its constitution may advantageously be modified by the introduction of more Indians into it and by shortening of the period of the service upon it, in order to ensure a continuous flow of fresh experience from India and to relieve Indian members from the necessity of spending so long a period as seven years in England.

*Clause 33.*—The Committee have given most careful consideration to the relations of the Secretary of State with the Government of India, and through it with the provincial governments. In the relations of the Secretary of State with the Governor-General in Council the Committee are not of opinion that any statutory change can be made, so long as the Governor-General remains responsible to Parliament, but in practice the conventions which now govern these relations may wisely be modified to meet fresh circumstances caused by the creation of a Legislative Assembly with a large elected majority. In the exercise of his responsibility to Parliament, which he cannot delegate to anyone else, the Secretary of State may reasonably consider that only in exceptional circumstances should he be called upon to intervene in matters of purely Indian interest where the Government and the Legislature of India are in agreement.

This examination of the general proposition leads inevitably to the consideration of one special case of non-intervention. Nothing is more likely to endanger the good relations between India and Great Britain than a belief that India's fiscal policy is dictated from Whitehall in the interests of the trade of Great Britain. That such a belief exists at the moment there can be no doubt. That there ought to be no room for it in the future is equally clear. India's position in the Imperial Conference opened the door to negotiation between India and the rest of the Empire, but negotiation without power to legislate is likely to remain ineffective. A satisfactory solution of the question can only be guaranteed

by the grant of liberty to the Government of India to devise those tariff arrangements which seem best fitted to India's needs as an integral portion of the British Empire. It cannot be guaranteed by statute without limiting the ultimate power of Parliament to control the administration of India, and without limiting the power of veto which rests in the Crown ; and neither of these limitations finds a place in any of the Statutes in the British Empire. It can only therefore be assured by an acknowledgment of a convention. Whatever be the right fiscal policy for India, for the needs of her consumers as well as for her manufacturers, it is quite clear that she should have the same liberty to consider her interests as Great Britain, Australia, New Zealand, Canada and South Africa. In the opinion of the Committee, therefore, the Secretary of State should as far as possible avoid interference on this subject when the Government of India and its Legislature are in agreement, and they think that his intervention, when it does take place, should be limited to safeguarding the international obligations of the Empire or any fiscal arrangements within the Empire to which His Majesty's Government is a party.

The relations of the Secretary of State and of the Government of India with provincial governments should, in the Committee's judgment, be regulated by similar principles, so far as the reserved subjects are concerned. It follows, therefore, that in purely provincial matters, which are reserved, where the provincial government and legislature are in agreement, their view should ordinarily be allowed to prevail, though it is necessary to bear in mind the fact that some reserved subjects do cover matters in which the central government is closely concerned. Over transferred subjects, on the other hand, the control of the Governor-General in Council, and thus of the Secretary of State, should be restricted in future within the narrowest possible limits, which will be defined by rules under sub-clause 3 of Clause 1 of the Bill.

Rules under this clause will be subsidiary legislation of sufficient moment to justify their being brought especially to the notice of Parliament. The Secretary of State might conveniently discuss them with the Standing Committee whose creation has been recommended in this Report ; and Parliament would no doubt consider the opinion of this body

when the rules come, as it is proposed that they should do, for acceptance by positive resolution in both Houses. The same procedure is recommended by the Committee for adoption in the case of rules of special or novel importance under other clauses of the Bill. It must be for the Secretary of State to decide which of the many rules that will fall to be drafted by the Government of India can be sufficiently dealt with by the ordinary process of lying on the table of Parliament for a certain number of days. In deciding this point, however, he may naturally have recourse to the advice of the Standing Committee, should it happen to be in session, and obtain their assistance in determining which rules deserve to be made the subject of the more formal procedure by positive resolution.

*Clause 35.*—This clause carries out the recommendation of Lord Crewe's Committee to appoint a High Commissioner for India, to be paid out of Indian revenues, who will perform for India functions of agency, as distinguished from political functions, analogous to those now performed in the offices of the High Commissioners of the Dominions.

#### PART IV.

*Clause 36.*—The Committee do not conceal from themselves that the position of the public services in working the new constitutions in the provinces will, in certain circumstances, be difficult. They are of opinion that these services have deserved the admiration and gratitude of the whole Empire. They know that some members of the services regard the wisdom of the proposed changes with grave misgiving, and that some fear that those changes will not tend to the welfare of the Indian masses. They are convinced, however, that the services will accept the changing conditions and the inevitable alteration in their own position, and devote themselves in all loyalty to making a success, so far as in them lies, of the new constitution.

In the provinces, officers serving in a reserved department will be controlled by the Governor in Council, and in a transferred department by the Governor acting with ministers, but in both cases alike the personal concurrence of the Governor should be regarded as essential in the case of all orders of any importance prejudicially affecting the position or prospects of officers appointed by the Secretary of State.

## THE INDIAN CONSTITUTION.

The Committee think that every precaution should be taken to secure to the public servants the career in life to which they looked forward when they were recruited, and they have introduced fresh provisions into this clause to that end. If friction occurs, a re-adjustment of persons and places may often get over the difficulty, and the Governor must always regard it as one of his most important duties to establish a complete understanding between his ministers and the officers through whom they will have to work. But if there are members of the service whose doubts as to the changes to be made are so deeply-rooted that they feel they cannot usefully endeavour to take part in them, then the Committee think it would only be fair to those officers that they should be offered an equivalent career elsewhere, if it is in the power of His Majesty's Government to do so, or, in the last resort, that they should be allowed to retire on such pension as the Secretary of State in Council may consider suitable to their period of service.

### PART V.

*Clause 41.*—The Committee are of opinion that the Statutory Commission should not be appointed until the expiration of ten years, and that no changes of substance in the constitution, whether in the franchise or in the lists of reserved and transferred subjects or otherwise, should be made in the interval. The Commission will be fully empowered to examine the working of the constitutions in all their details in the provinces, and to advise whether the time has come for full responsible government in each province, or in the alternative whether and to what extent the powers of self-government already granted should be extended, or modified, or restricted. It should be clearly understood, also, that the Commission should be empowered to examine into the working of the Government of India and to advise in respect of the Government of India no less than in respect of the provincial governments.

8. This concludes the Committee's specific recommendations on the Bill. There remain certain other topics which do not conveniently fall within any particular clause. The first of these is the treatment of Burma, and after hearing evidence the Committee have not advised that Burma should be

included within the scheme.' They do not doubt but that the Burmese have deserved and should receive a constitution analogous to that provided in this Bill for their Indian fellow-subjects. But Burma is only by accident part of the responsibility of the Governor-General of India. The Burmese are as distinct from the Indians in race and language as they are from the British.

9. Doubts have been expressed from several quarters questioning the financial adjustment proposed between the Central and Provincial Governments in India. Without expressing any opinion on this controversy, the Committee accept and endorse the recommendation of the Government of India that a fully qualified financial commission should be appointed to advise as to the principle on which contributions from the provincial government to the Central Government should in future be adjusted.

10. The Committee think that it may often greatly assist the political education of India if standing committees of the legislative bodies are attached to certain departments of Government, but they only express this opinion on the understanding that the appointment of such committees, their composition, and the regulation which govern their procedure, shall be matters wholly and exclusively within the discretion of the Governor-General or of the Governor as the case may be.

11. The Committee are impressed by the objections raised by many witnesses to the manner in which certain classes of taxation can be laid upon the people of India by executive action without, in some cases, any statutory limitation of the rates and, in other cases, any adequate prescription by statute of the methods of assessment. They consider that the imposition of new burdens should be gradually brought more within the purview of the Legislature. And in particular, without expressing any judgment on the question whether the land revenue is a rent or tax, they advise that the process of revising the land revenue assessments ought to be brought under closer regulation by statute as soon as possible. At present the statutory basis for charging revenue on the land varies in different provinces, but in some at least the pitch of assessment is entirely at the discretion of the executive government. No branch of the administration is

regulated with greater elaboration or care ; but the people who are most affected have no voice in the shaping of the system, and the rules are often obscure and imperfectly understood by those who pay the revenue. The Committee are of opinion that the time has come to embody in the law the main principles by which the land revenue is determined, the methods of valuation, the pitch of assessment, the periods of revision, the graduation of enhancements, and the other chief processes which touch the well-being of the revenue payers. The subject is one which probably would not be transferred to ministers until the electorate included a satisfactory representation of rural interests, those of the tenantry as well as of the landlords ; and the system should be established on a clear statutory basis before this change takes place.

12. The Committee have not hitherto touched on the subject of education in India, and it is far too large for them to make any attempt to deal with it adequately. They have accepted the recommendation of the Functions Committee that, subject to certain reservations about the Universities, the responsibility for the whole field of education in each province should be transferred to ministers. They attach much importance, however, to the educational advancement of the depressed and backward classes, and they trust that the subject will receive special attention from ministers. They are also impressed by the advantage of Boards such as Sir Michael Sadler has advised in Bengal, for the assistance of ministers in controlling the different grades of education, and they trust that ministers will see their way from the outset to constitute such Boards in every province. The Committee would similarly commend to ministers the advisability of creating local government departments in the provinces.

13. The Committee attach the greatest importance to the formation in each provincial government of a strong department of Finance which will serve both sides of the Government alike.

14. The Committee have been greatly struck by the earnest representations made to them by several witnesses, both of British and Indian birth, to the effect that the Government of India and the provincial governments must



## REPORT OF THE JOINT SELECT COMMITTEE.

become more vocal, and put forth their view of what the good of India requires with more courage and more persistence than they have in the past. It has been represented to them that it will be of the utmost importance in the future that the Government of India and the provincial governments should have means of explaining to the people of India the reasons why things are done, the reasons which underlie decisions, and the arguments against proposals which they consider will be detrimental to the welfare of the country. It was represented to the Committee that at present, to a great extent, the case for the policy of the Government of India and of the provincial governments is unknown to the masses of Indians, whereas the case against that policy is becoming every day more widely disseminated by means of the vernacular press. They are glad to think that this opinion is also shared by the Secretary of State for India and the Viceroy. It is dealt with in paragraph 326 of their report on Indian Constitutional Reforms.

15. In conclusion the Committee emphatically repudiate the suggestion that the changes in this Bill in the form of the provincial governments of India imply any condemnation of the present system of government in India. The Government of India has accomplished great things for India's good and one of its greatest services has been the introduction into India of a reign of law, to which the Government itself is as much subject as the people it governs. It is no reproach to it that in form it has been everywhere autocratic. So long as Parliament on the one hand did not bestow any form of constitutional self-government on any part of India, and on the other hand held the Government of India rigidly responsible to itself for its every action, it could not be otherwise in the provinces any more than at the central seat of government. But, whatever the form, the spirit of its being everywhere and always has been effort for the welfare of the masses of the people of India.

16. The Committee have directed the Minutes of Proceedings, together with Appendices, to be laid before both Houses of Parliament.

## **XVI. Lists of Central and Provincial Subjects proposed by Functions Committee, as revised by India Office Reforms Committee, 31st July, 1919.**

[FROM THE APPENDIX TO THE JOINT SELECT COMMITTEE'S REPORT.]

*Note.*—In order to facilitate reference the numbering of subjects as in the Report of the Functions Committee has been retained, additional subjects being distinguished by a number followed by a capital letter, e.g., 20A.

### CENTRAL SUBJECTS

1. Defence of India, and all matters connected with His Majesty's Naval, Military, and Air Forces in India, including Royal Indian Marine, volunteers, cadets and armed forces other than military, and armed police maintained by provincial Governments.

Naval and military works and cantonments.

2. External relations, including naturalisation and aliens, and pilgrimages beyond India.

3. Relations with Native States.

6. Communications—to the extent described under the following heads—

(a) Railways and tramways, except tramways within municipal areas, and except in so far as provision may be made for construction and management of light and feeder railways and tramways other than tramways within municipal areas, by provincial legislation enacted in accordance with procedure to be prescribed by standing orders of the provincial Legislative Council.

(b) Such roads, bridges, ferries, tunnels, ropeways, causeways, and other means of communication as are declared by the Governor-General in Council to be of military importance.

(c) Aircraft and all matters connected therewith.

(d) Inland waterways, to an extent to be declared by rule or by or under Indian legislation.

## LIST OF CENTRAL AND PROVINCIAL SUBJECTS.

7 Shipping and Navigation (including shipping and navigation on inland waterways in so far as declared to be under Indian control in accordance with 6 (d)).

8 Light-houses (including their approaches), beacons, lightships, and buoys.

9. Port quarantine and marine hospitals

10. Ports declared to be major ports by rule or by or under Indian legislation.

11. Posts, telegraphs and telephones, including wireless installations.

12. Customs, cotton excise duties, income tax, salt, stamps (non-judicial), and other sources of All-India revenue.

13. Currency and coinage.

14. Public debt of India.

15. Savings banks.

16. Department of the Comptroller and Auditor-General.

17. Civil law, including laws regarding status, property, civil rights and liabilities, and civil procedure.

18. Commerce, including banking and insurance.

19. Trading companies and other associations.

20 Control of production, supply and distribution of any articles in respect of which control by a central authority is declared by rule or by or under Indian legislation essential in the public interest.

20A. Development of industries in cases where such development by a central authority is declared by order of the Governor-General in Council expedient in the public interest.

20B. Control of cultivation and manufacture of opium, and sale of opium for export.

21. Control of petroleum and explosives.

22 Geological survey.

23 Control of mineral development, in so far as such control is reserved to the Governor-General in Council under rules made or sanctioned by the Secretary of State, and regulation of mines.

## THE INDIAN CONSTITUTION.

24. Inventions and designs.
25. Copyright.
26. Emigration and immigration and intra provincial migration.
27. Criminal Law, including criminal procedure.
28. Central police organisation.
29. Control of possession and use of arms.
30. Central agencies and institutions for research (including observatories) and for professional or technical training or promotion of special studies.
31. Ecclesiastical administration.
32. Survey of India.
33. Archæology.
34. Zoological Survey.
35. Meteorology.
36. Census and Statistics.
37. All-India Services.
38. Legislation in regard to any provincial subject, in so far as such subject is stated in the Provincial List to be subject to Indian legislation, and any powers relating to such subject reserved by legislation to the Governor-General in Council.
- 38A. Territorial changes, other than intra provincial, and declaration of laws in connection therewith.
- 38B. Regulation of ceremonial, titles, orders, precedence and civil uniform.
- 38C. Immovable property acquired by, or maintained at, the cost of the Governor-General in Council.
39. All matters expressly excepted from inclusion in the Provincial List.
40. All other matters not included in the list of provincial subjects.

## PROVINCIAL SUBJECTS.

1. Local self-government, that is to say matters relating to the constitution and powers of municipal corporations, improvement trusts, district boards, mining boards of health

LIST OF CENTRAL AND PROVINCIAL SUBJECTS.

and other local authorities established in the province for the purpose of local self-government, exclusive of matters arising under the Cantonments Act, and subject to Indian legislation (a) as regards powers of such authorities to borrow otherwise than from a provincial government, and (b) as regards the levying by such authorities of taxation not included in the schedule of provincial taxation framed under section 79 (3) (a) of the Act.

2. Medical administration, including hospitals, dispensaries and asylums and provision for medical education.

3. Public health and sanitation and vital statistics, subject to Indian legislation in respect to infectious and contagious diseases to such extent as may be declared by any Act of the Indian legislature.

4. Education (excluding—

(1) The Benares Hindu University, and such other new Universities as may be declared to be All-India by the Governor-General in Council.

(2) Chiefs' Colleges and any institution maintained by the Governor-General in Council for the benefit of members of His Majesty's Forces or other public servants or their children.)

subject to Indian legislation—

(a) controlling the establishment and regulating the constitutions and functions of new universities; and

(b) defining the jurisdiction of any university outside its own province;

and, in the case of Bengal, for a period of five years from the date when the reforms scheme comes into operation, subject to Indian legislation with regard to the Calcutta University and the control and organisation of secondary education.

5. Public works included under the following heads :—

(a) Construction and maintenance of provincial buildings used or intended for any purpose in connection with the administration of the Province; and care of historical monuments, with the exception of monuments and burial places included in Schedule;

## THE INDIAN CONSTITUTION.

(b) Roads, bridges, ferries, tunnels, ropeways and causeways, other than such as are declared by the Governor-General in Council to be of military importance ;

(c) Tramways within municipal areas ; and

(d) Light and feeder railways, and tramways, other than tramways within municipal areas in so far as provision is made for their construction and management by provincial legislation in accordance with procedure to be prescribed by standing orders of the Provincial Legislative Council

6. Water supplies, irrigation, and canals, drainage and embankments, water storage and water-power, subject to Indian legislation with regard to matters of inter-provincial concern or affecting the relations of a province with any other territory.

7. Land Revenue administration, as described under the following heads :—

(a) Assessment and collection of land revenue ;

(b) Maintenance of land records, survey for revenue purposes, records of rights ;

(c) Laws regarding land tenures, relations of landlords and tenants, collection of rent ;

(d) Court of Wards, incumbered and attached estates ;

(e) Land improvement and agricultural loans ,

(f) Colonisation and disposal of Crown lands and alienation of land revenue ;

(g) Management of Government estates.

8. Famine relief.

9. Agriculture, including research institutes, experimental and demonstration farms, introduction of improved methods, provision for agricultural education, protection against destructive insects and pests and prevention of plant diseases, subject to Indian legislation in respect to destructive insects and pests, and plant diseases, to such extent as may be declared by any Act of the Indian legislature.

10. Civil Veterinary Department, including provision for veterinary training, improvement of stock, and prevention of animal diseases, subject to Indian legislation in respect to animal diseases to such extent as may be declared by any Act of the Indian Legislature.

LIST OF CENTRAL AND PROVINCIAL SUBJECTS.

11. Fisheries.
12. Co-operative Societies
13. Forests, including preservation of game therein, subject to Indian legislation as regards distorestation.
14. Land acquisition, subject to Indian legislation as regards acquisition of land for public purposes.
15. Excise, that is to say the control of production, manufacture, possession, transport, purchase and sale of alcoholic liquor and intoxicating drugs, and the levying of excise duties and licence fees on or in relation to such articles, but excluding, in the case of opium, control of cultivation, manufacture and sale for export.
16. Administration of justice, including constitution, powers, maintenance and organisation of Courts of civil and criminal jurisdiction within the province, subject to Indian legislation as regards High Courts, Chief Courts, and Courts of Judicial Commissioners, and any Courts of criminal jurisdiction.
17. Provincial law reports.
18. Administrator-General and Official Trustee, subject to Indian legislation.
19. Judicial stamps, subject to Indian legislation as regards amount of court fees levied in relation to suits and proceedings in the High Courts under their Original Jurisdiction.
20. Registration of deeds and documents, subject to Indian legislation.
21. Registration of births, deaths and marriages, subject to Indian legislation for such classes as the Indian legislature may determine.
22. Religious and charitable endowments.
23. Development of mineral resources which are Government property, subject to rules made or sanctioned by the Secretary of State, but not including the regulation of mines.
24. Development of industries, including industrial research and technical education.

## THE INDIAN CONSTITUTION.

25. Industrial matters included under the following heads :—

- (a) Factories ;
- (b) Settlement of labour disputes ;
- (c) Electricity ;
- (d) Boilers ;
- (e) Gas ;
- (f) Smoke nuisances ; and
- (g) Welfare of labour, including provident funds, industrial insurance (general, health and accident) and housing , subject as to (a), (b), (c) and (d) to Indian legislation.

26. Adulteration of food-stuffs and other articles, subject to Indian legislation as regards import and export trade.

27. Weights and measures, subject to Indian legislation as regards standards.

28. Ports, except such ports as may be declared by rule or by or under Indian legislation to be major ports.

29. Inland waterways, including shipping and navigation thereon so far as not declared to be under control of the Governor-General in Council, but subject as regards inland steam vessels to Indian legislation.

30. Police, including railway police, subject in the case of railway police to such conditions as regards limits of jurisdiction and railway contributions to cost of maintenance as the Governor-General in Council may determine.

31. Miscellaneous matters :—

- (a) regulation of betting and gambling ;
- (b) prevention of cruelty to animals ;
- (c) protection of wild birds and animals ;
- (d) control of poisons, subject to Indian legislation ;
- (e) control of motor vehicles, subject to Indian legislation as regards licences valid throughout British India ; and
- (f) control of dramatic performances and cinematographs, subject to Indian legislation in regard to sanction of films for exhibition.



LIST OF CENTRAL AND PROVINCIAL SUBJECTS.

32. Control of newspapers, books and printing presses, subject to Indian legislation.
33. Coroners.
- 33A. Excluded Areas.
34. Criminal tribes, subject to Indian legislation.
35. European vagrancy, subject to Indian legislation.
36. Prisons, prisoners (except State prisoners) and reformatories, subject to Indian legislation.
37. Pounds and prevention of cattle trespass.
38. Treasure trove
39. Museums (except the Indian Museum, Imperial War Museum and the Victoria Memorial, Calcutta) and zoological gardens
40. Provincial Government Press.
41. Franchise and elections for Indian and provincial legislatures, subject to Indian legislation.
42. Regulation of medical and other professional qualifications and standards, subject to Indian legislation.
43. Control, as defined by rule, of members of All-India services serving within the province, and control, subject to Indian legislation, of other public services within the province.
44. Sources of provincial revenue not included under previous heads, whether (a) taxes included in the schedule of provincial taxation framed under section 79 (3) (a) of the Act or (b) taxes not included in such schedule imposed by or under provincial legislation which has received the previous sanction of the Governor-General.
45. Borrowing of money on the sole credit of the province, subject to Indian legislation.
46. Imposition by legislation of punishments by fine, penalty or imprisonment, for enforcing any law of the province relating to any provincial subject, but subject to Indian legislation where that limitation otherwise applies to such subject.
47. Any matter which, though falling within an All-India subject, is declared by the Governor-General in Council to be of a merely local or private nature within the province.

# THE INDIAN CONSTITUTION.

LIST OF PROVINCIAL SUBJECTS FOR TRANSFER PROPOSED BY  
FUNCTIONS COMMITTEE, AS REVISED BY INDIA OFFICE  
REFORMS COMMITTEE 31ST JULY, 1919.

Serial No.	Number in Provincial List.	Subjects.	Provinces in which transferred.
1	1	Local self-government, that is to say, matters relating to the constitution and powers of municipal corporations, improvement trusts, district boards, mining boards of health and other local authorities established in the province for purposes of local self-government, exclusive of matters arising under the Cantonments Act, and subject to Indian legislation (a) as regards powers of such authorities to borrow otherwise than from a provincial Government, and (b) as regards the levying by such authorities of taxation not included in the schedule of provincial taxation passed under section 79 (3) (a) of the Act.	In all provinces.
2	2	Medical administration, including hospitals, dispensaries and asylums and provision for medical education	In all provinces
3	3	Public health and sanitation and vital statistics, subject to Indian legislation in respect to infectious and contagious diseases to such extent as may be declared by any Act of the Indian legislature.	In all provinces.
4	4	Education, other than European and Anglo-Indian education (excluding— (1) The Benares Hindu University, and such other new universities as may be declared to be All-India by the Governor-General in Council ; (2) Chiefs' Colleges, and any institution maintained by the Governor.	In all provinces

# LIST OF CENTRAL AND PROVINCIAL SUBJECTS.

## LIST OF PROVINCIAL SUBJECTS FOR TRANSFER PROPOSED BY FUNCTIONS COMMITTEE, AS REVISED BY INDIA OFFICE REFORMS COMMITTEE 31st JULY, 1919—*continued.*

Serial No	Number in Provincial List	Subjects	Provinces in which transferred
5	5	<p>General in Council for the benefit of members of His Majesty's Forces or other public servants or their children) subject to Indian legislation—</p> <p>(a) controlling the establishment, and regulating the constitutions and functions of new universities, and</p> <p>(b) defining the jurisdiction of any university outside its own province; and, in the case of Bengal, for a period of five years from the date when the reforms scheme comes into operation, subject to Indian legislation with regard to the Calcutta University and the control and organisation of secondary education.</p> <p>Public Works included under the following heads —</p> <p>(a) Construction and maintenance of provincial buildings used or intended for any purpose in connection with the administration of the province on behalf of the departments of Government concerned, save in so far as the Governor may assign such work to the Departments using or requiring such buildings, and care of historical monuments, with the exception of monuments and burial places included in Schedule,</p> <p>(b) Road, bridges, terraces, tunnels, ropeways and causeways other than such as are declared by the Governor-General in Council to be of military importance,</p> <p>(c) Tramways within municipal areas, and</p>	In all provinces except Assam.

# THE INDIAN CONSTITUTION.

LIST OF PROVINCIAL SUBJECTS FOR TRANSFER PROPOSED BY FUNCTIONS COMMITTEE, AS REVISED BY INDIA OFFICE REFORMS COMMITTEE 31ST JULY, 1919—*continued*.

Serial No.	Number in Provincial List.	Subjects.	Provinces in which transferred.
		(d) Light and feeder railways and tramways, other than tramways within municipal areas, in so far as provision is made for their construction and management by provincial legislation in accordance with procedure to be prescribed by standing orders of the provincial Legislative Council.	
6	9	Agriculture, including research institutes, experimental and demonstration farms, introduction of improved methods, provision for agricultural education, protection against destructive insects and pests and prevention of plant diseases, subject to Indian legislation in respect to destructive insects and pests and plant diseases to such extent as may be declared by any Act of the Indian legislature	In all provinces
7	10	Civil Veterinary Department, including provision for veterinary training, improvement of stock, and prevention of animal diseases, subject to Indian legislation in respect to animal diseases to such extent as may be declared by any Act of the Indian legislature.	In all provinces
8	11	Fisheries. ... ..	In all provinces, except Assam
9	12	Co-operative Societies. ... ..	In all provinces.
10	13	Forests, including preservation of game therein, subject to Indian legislation as regards disforestation.	In Bombay only
11	15	Excise, that is to say, the control of production, manufacture, possession, trans-	In all provinces, except Assam.

# LIST OF CENTRAL AND PROVINCIAL SUBJECTS.

LIST OF PROVINCIAL SUBJECTS FOR TRANSFER PROPOSED BY FUNCTIONS COMMITTEE, AS REVISED BY INDIA OFFICE REFORMS COMMITTEE 31ST JULY, 1919—concluded.

Serial No	Number in Provincial List.	Subjects	Provinces in which transferred.
		port, purchase, and sale of alcoholic liquor and intoxicating drugs, and the levying of excise duties and licence fees on or in relation to such articles, but excluding, in the case of opium, control of cultivation, manufacture and sale for export	
12	20	Registration of deeds and documents subject to Indian legislation.	In all provinces
13	21	Registration of births, deaths and marriages, subject to Indian legislation for such classes as the Indian legislature may determine.	In all provinces.
14	22	Religious and charitable endowments . .	In all provinces.
15	24	Development of industries, including industrial research and technical education.	In all provinces.
16	26	Adulteration of food-stuffs and other articles, subject to Indian legislation as regards import and export trade	In all provinces.
17	27	Weights and measures, subject to Indian legislation as regards standards.	In all provinces.
18	39	Museums (except the Indian Museum, Imperial War Museum, and the Victoria Memorial, Calcutta) and Zoological Gardens	In all provinces.

## **XVII. Report of Lord Meston's Committee on Financial Relations.**

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### **CHAPTER I.**

#### **PRELIMINARY.**

As a preliminary to constitutional reforms, the authors of the Montagu-Chelmsford report urged the importance of a complete separation between the finances of the central government in India and those of the various provincial governments. To this end they outlined the scheme described in Chapter VIII of their report. It abrogates the present system by which certain of the main heads of revenue and expenditure are divided between the central and the provincial exchequers, some of these it hands over wholly to the central government, others wholly to the provinces. Inasmuch, however, as by this re-arrangement the Government of India will lose heavily, the scheme proposes to compensate them, to such extent as may be necessary to prevent a deficit in their own budget, by contributions from the provinces; and the power to levy such contributions is taken in section 1 (2) of the Government of India Act, 1919.

2. In assessing this levy the authors of the report met with a serious obstacle in the disparity which already exists between local governments in the pitch of their revenues and the scale of their expenditure, a disparity deep-rooted in the economic position of the different provinces, their revenue history and the tale of their oft-revised financial arrangements with the central government. For this inequality of burdens the authors of the report found no remedy in the several alternative methods of fixing the provincial contributions which they examined. Their ultimate choice fell upon an assessment in the ratio of the gross surplus which they estimated that each province would enjoy under the new allocation of resources. In recognition of the admitted fact that this method would largely affirm existing inequalities, they advised that the whole question should be re-investigated by the statutory commission after ten years' working.

## REPORT OF THE COMMITTEE ON FINANCIAL RELATIONS.

3. The Government of India, in expressing their views on the scheme, pressed for an earlier treatment of the matter ; *vide* paragraph 61 of their despatch of the 5th March 1919. They described the feeling which had been aroused against the *prima facie* injustice of the exemplar figures given in the report. They urged that any such settlement should be "recognised as temporary and provisional, and that steps be taken as soon as possible to fix a standard and equitable scale of contributions,..... ..towards which the provinces will be required to work by stages, as a condition of the new arrangements." They proposed the appointment of a Committee on Financial Relations to advise on the subject. This recommendation was accepted and endorsed by the Joint Select Committee of Parliament which sat on the Reforms Bill. We were accordingly appointed by the Secretary of State, and given the following terms of reference :—

To advise on—

- (a) the contributions to be paid by the various provinces to the central government for the financial year 1921-22 ;
- (b) the modifications to be made in the provincial contributions thereafter with a view to their equitable distribution until there ceases to be an All-India deficit ;
- (c) the future financing of the provincial loan accounts ; and
- (d) whether the Government of Bombay should retain any share of the revenue derived from income-tax.

Clause (d) of these instructions was a later addition made at the instance of the Government of Bombay, and was not communicated to us until we had completed our consultations with several of the larger provinces.

4. We formally opened our enquiry at Delhi on the 5th February, 1920. We then visited in turn Allahabad, Patna, Calcutta, Rangoon, Madras, Bombay and Lahore. Pressure of time compelled us to ask that the consideration of the cases of Assam and the Central Provinces should be undertaken at Calcutta and Bombay, respectively, and we are indebted to the two Chief Commissioners for meeting us in this request at some inconvenience to themselves. Our

procedure was to discuss the subjects of our enquiry in each province with the Member of the Executive Council who holds the financial portfolio, or, in provinces where there is no Council, with the Secretary in charge of the Financial Department, and with such other officials as those gentlemen introduced. Sir Nicholas Beatson-Bell, the Chief Commissioner of Assam, presented the case of his province in person. After taking the official evidence we met those members of the finance committee of the provincial legislature who were ready to favour us with their views. We finally received such members of the general public or representatives of public bodies as offered themselves for examination. In most cases we had informal consultations with the Head of the Province; and the local government of Bombay as a whole accorded us two interviews.

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## CHAPTER II.

### THE GOVERNMENT OF INDIA'S DEFICIT.

5. In order to effect the desired separation of central from provincial finance, the Montagu-Chelmsford report (paragraph 203) proposes that the central exchequer should receive the whole of the Income-tax and the revenue from General Stamps; and that the provinces should retain the entire receipts from Land revenue, Irrigation, Excise and Judicial Stamps, while they should be wholly responsible for the corresponding charges and for all expenditure in connexion with famine. We read (the report of) the Joint Select Committee of Parliament as approving this redistribution, and we considered that it would be outside our duty to advise any alteration of the scheme in this respect unless we found the strongest reason for a change. The arguments addressed to us on this branch of the subject have related mainly to Income-tax and General Stamps. Certain local governments have remonstrated against losing a share in those two heads, and the plea for making the whole, or at least one-half, of the income-tax receipts a provincial asset was pressed with special earnestness in Bombay. Under our instructions we have to



report on the point for that presidency ; but we have found it difficult to treat the issue as applicable to one province only. The grounds of the Bombay claim are common to all provinces and more especially to those in which large commercial and industrial activities are centred.

6. The basic objection to the transfer of Income-tax is that the provinces will thus be deprived of any share in a head of revenue which has recently shown a remarkable capacity for expansion, while they are left to finance their rapidly growing administrative needs with heads of revenue in which the increase is slow or problematical. How far the remarkable growth of the income-tax receipts in late years has been stimulated by war conditions, we have not attempted to estimate ; but we are assured that large improvements are being made in the assessment staff and in their methods, and that a rapid and continuous growth in the return may be counted upon. Several local governments urge that the yield from Income-tax is the only direct contribution to their public revenue which is made by the industrial wealth of their provinces ; and governments, which administer great mercantile and manufacturing centres like Calcutta and Bombay, claim special consideration for the heavy expenditure in which those centres involve them. To these arguments the Bombay government added their apprehension that a time may come when a local government may not be anxious to direct, or its officers zealous to enforce, the collection of a tax which brings no grist to the provincial mill. This last contention was put forcibly ; but we presume that the Government of India will not be powerless to require the fulfilment by a provincial government of its obligations under the new constitution, and that public servants will not be remiss in carrying out public duties with which they can be charged by law.

7. We doubt if it will be possible permanently to exclude local governments from some form of direct taxation upon the industrial and commercial earnings of their people, and we recognise the natural anxiety of provinces to retain a share in a rapidly improving head of revenue. But, so far as the income-tax is concerned, we see no reason to vary the scheme of the report. We accept as valid the arguments given by its authors (paragraph 203) ; indeed, the second of these arguments seems to us capable of further extension in the case of public companies with shareholders scattered over India

# THE INDIAN CONSTITUTION.

and elsewhere. We advise, therefore, that the whole of the income-tax proceeds be credited to the central government. Their needs in the near future are likely to be quite as great, and to develop quite as rapidly, as those of the provinces; while we do not apprehend that the richer provinces, such as Bombay, will be seriously handicapped in the administration of their own finances. We append, and shall allude to them hereafter, some figures which indicate that several of the provinces, and Bombay in particular, may look for reasonable elasticity in their revenues apart from the income-tax—an elasticity which will in most cases be encouraged by judicious capital outlay.

*Percentage of growth in the last 8 years (1912-13 to Budget 1920-21) under the proposed provincial heads.*

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Province.	Excise.	General Stamps.	Land Revenue and other provincial heads.	All provincial heads.
Madras ... ..	70'24	63 22	11'66	29'06
Bombay ... ..	102'57	119'13	32'00	52 43
Bengal ... ..	35'91	69 49	13'52	22'30
United Provinces ... ..	43'70	45 75	17'13	20'82
Punjab ... ..	106 78	73 73	26'86	34'88
Burma ... ..	36'15	26'62	33'52	33 65
Bihar and Orissa ... ..	24'20	55'29	4'53	11'20
Central Provinces ... ..	49'00	48 25	26 30	33'18
Assam ... ..	44'26	22 22	20'60	28'00
All the nine provinces ... ..	62'2	69'24	20'98	30 48

8. The case of General Stamps is somewhat different. We have approached it, in the first instance, from the point of view of the poorer provinces. Some of these, it seems clear, would start with little or no surplus revenue under the allocation of resources proposed in the report; and this would be both a misfortune in itself and at variance with what we believe to be the intention, if not the implied promise, of the report. No remedy suggests itself except some extension of the schedule of provincial heads; doles and temporary assistance would be inconsistent with the whole policy. In this

## REPORT OF THE COMMITTEE OF FINANCIAL RELATIONS.

view, and also because it will greatly facilitate our initial distribution of the central deficit, we advise that General Stamps be made a provincial head throughout. The arguments in the report for crediting it to the central government have not the same force as in the case of Income-tax. We are not disposed to see grave disadvantage in different rates of stamp duty in different provinces, at least on some of the transactions for which duty has to be paid; and any uniformity which may be decided to be essential can always be secured by central legislation. Moreover, in this part of the arrangements there is still the taint of a divided head, for General and Judicial Stamps are controlled by the same agency, and there is a good deal of miscellaneous work and outlay common to both. To make the whole of the Stamp revenue provincial would secure a genuine and complete separation of resources; and we trust that the reasons for this course will outweigh the only consideration on the other side, to wit the extent to which the deficit in the All-India budget will thereby be increased.

9. That deficit we accept, subject to certain arithmetical adjustments described below, as amounting in the year 1921-22 to 10 crores, composed of the 6 crores previously estimated by the Government of India *plus* 4 crores for the loss of General Stamps which we propose. We have carefully examined the basis of this calculation. Clearly, we have no authority to criticise the military and financial policy on which it so largely rests; and we have restricted ourselves to a scrutiny of the budget arrangements of the Government of India, past and present, and of the normal growth of their revenue and expenditure. Factors of great uncertainty,—the needs of India's defence, her tariff policy and the future of exchange among others,—complicate the estimate; but we are satisfied that the Government of India have made reasonable allowance for those considerations in their forecast of the immediate financial future. On our tour in the provinces, it has been pressed upon us that the Government of India ought to meet their own deficit by special taxation, and a high protective tariff has frequently been mentioned to us as an easy solution of the problem. On this latter question we naturally express no opinion; but we cannot see that the Government of India would have any justification in imposing special taxation to make good their initial shortage of revenue, at a

## THE INDIAN CONSTITUTION.

time when the shortage in question will be more than counter-balanced by the additional resources enjoyed by local governments. As we have said therefore we accept the estimate of the normal deficit for the first year of the new constitution. We cannot conceal from ourselves the disadvantages in ordinary circumstances of a system of provincial contributions, and we anticipate that the Government of India will direct its financial policy towards reducing those contributions with reasonable rapidity, and their ultimate cessation. We recognise that it would be imprudent on the part of the central government to give any guarantee of the precise pace of reduction ; but we think that a formal enunciation of the general policy would go some way to allay apprehensions which have been expressed to us. Such a policy would clearly be subject to the important reservation mentioned in the report, by which the central government must remain empowered to levy special contributions, by way of temporary loan or otherwise, from the provinces in the event of any crisis of first importance.

10. In arriving at the figure which has actually to be distributed over the provinces, we have had to make certain adjustments. One of these is special and local, and we may dispose of it at once, on the clear understanding that our treatment of the matter is entirely subject to the approval of the Government of India. It relates to the incidence of the cost of the military police force in Burma. The government of that province, we understand, is discussing the point with the Government of India ; and their view, as expressed to us, is that 68 per cent. of the expenditure on the force is incurred for frontier defence and ought to be a debit to the central power. The figures originally before us had suggested a division of the cost of the force equally between the Government of India and Burma ; but the local government now presses for more generous treatment, and estimates that the share of the outlay on the military police which is equitably chargeable to the province is only 17·42 lakhs against the 31·58 lakhs which had been taken in an earlier calculation. Subject to the assent of the Government of India, we have provisionally accepted this view, and we are reducing the provincial expenditure accordingly, and making an equivalent addition to the charges, and thus to the deficit, of the central government. The main adjustments that have been sug-

gested, however, are concerned with the payment of pensions. At present the central government is debited with all civil pensions drawn outside India, whether the pensioner has served in a province or in an imperial department, and no debit is raised against the provinces concerned. On the other hand, pensioners whose service has been under the central government are paid by the province in which they reside, which receives nothing in recoupment. It has been suggested that pensions paid outside India ought to be debited to the provinces when they are paid to provincial servants and simultaneously that the Government of India should relieve the provinces by paying their own pensioners. So far as the future is concerned, the propriety of this change is beyond question. Doubts, however, occurred to us regarding existing payments. Exchange complications and difficulties of exact allocation interfere with precision ; while other and more general considerations point on the whole to the advisability of retaining on the books of the central and provincial governments respectively the pensions for which they are at present responsible. We advise, therefore, that the readjustment of debits should take place only for pensions sanctioned on or after the 1st April 1921, and that pensions drawn before that date should be allowed to work themselves off on the present footing, this arrangement being definitely made a feature in the new financial settlement. We may note incidentally, with reference to a point raised by the Punjab, that provinces have no claim on any annuity fund in respect of those members of the Indian Civil Service from whose pay a 4 per cent. deduction has until recently been made under the general rules in the Civil Service Regulations. There is in fact no annuity fund in such cases, and the deduction has simply lapsed to provincial revenues. The result of our recommendations in this matter is that it does not necessitate any immediate change in the All-India deficit ; the net growth of their pension liabilities in future is a relatively small matter for which the provinces may be left to make provision without special assistance. The last adjustment to be made is on account of leave allowances drawn outside India. Those are paid at present in the same way as pensions drawn outside India. In future they ought certainly to be debited to the provinces concerned. The normal liability on this account can approximately be calculated, and the Secretary of State has given us a figure of £ 311,000

for the nine provinces affected by our enquiry. We have converted this at two shillings to the rupee, distributed the liability among the provinces, and subtracted 31·10 lakhs from the Imperial charges and deficit. The latter thus works out to 10 crores *plus* 14·16 lakhs for the Burma Military Police *minus* 31·10 lakhs for leave allowances : or 9,83·06 lakhs net.

### CHAPTER III

#### THE INITIAL CONTRIBUTIONS.

II. We can now proceed to fix the ratio in which each of the nine provinces should contribute to this figure of 9,83 lakhs in the year 1921-22. It will clear the ground to state at the outset a limiting consideration by which we have felt ourselves bound. This is an obligation to leave each province with a reasonable working surplus,—a surplus which we should prefer to calculate, so far as possible, with some relation to the general financial position of the province and the more imminent claims upon its resources. From the preliminary enquiry conducted at Simla in October last, it is apparent that in certain provinces no surplus at all, and in others no adequate surplus, would have been possible without provincialisation of the revenue from General Stamps ; and our task would thus in our judgment have been futile. Looked at somewhat differently, the limit we have imposed on ourselves is that in no case may a contribution be such as would force the province to embark on new taxation *ad hoc*, which to our minds would be an unthinkable sequel to a purely administrative rearrangement of abundant general resources. This limit, however, obvious as it is, makes it inevitable that the initial contributions should be in some measure arbitrary, dictated by the existing financial position of each province and not by any equitable standard such as its capacity to pay. Whatever standard ratio of contributions we might advise,—and a subsequent chapter will narrate our proposals in that direction,—it would have, were it to be applied immediately, the effect of starting some provinces on their new career with a deficit, and we have thus to accept some measure of transition.

## REPORT OF THE COMMITTEE ON FINANCIAL RELATIONS.

12. We have now to explain our reasons for suggesting a departure from the basis of initial contribution proposed in the Montagu-Chelmsford report. We are aware that that basis was not lightly adopted, and only after consideration of various alternative bases,—population, provincial revenue or expenditure, and the like—which for one reason or another were thought inapplicable to existing conditions. The basis of realised surplus was finally accepted partly because of the difficulty of finding a preferable alternative, partly because at all events it did not add to, though it continued, existing disparities of contribution. That it has been freely criticised in evidence before us as inequitable is certainly not fatal to it, for indeed every initial basis that can be suggested is open to some such criticism. But examination has revealed some objections to it which weigh with us.

13. Obviously if any inequalities of contribution exist, the basis chosen tends to stereotype them, while by disclosing them it renders them more difficult to justify; for each province is now able to see more clearly than under the former system its relative contribution to the purse of the Government of India. While actual deficits appear, as has been said, in some provinces, others complain that their apparent surplus, if rightly understood, masks a real deficit. The prospect of arriving at any accepted figures as a basis appears remote. While the figures of the Simla conference as to normal provincial revenue are accepted with minor modifications of detail, the estimates of normal expenditure in each province are strongly contested. How much of the expenditure held over during the war, or clearly imminent if not already sanctioned, ought to be included in the calculation of normal expenditure? Where is the dividing line to be drawn between expenditure essential in the immediate future and expenditure foreseen as a future commitment? Ought a province to be penalised by an increase of its contribution for strict adherence to economy during the war, while another province, which had increased its expenditure more freely, is rewarded by a reduced contribution? Is adequate allowance made for the special conditions of a largely undeveloped province like Burma, or for the circumstances of a recently established province like Bihar and Orissa, which claims that it has never received from its start resources adequate to its needs? No satisfactory result seemed likely to be reached

by our attempting to act as a court of appeal in contentions of this kind. Moreover the artificial and temporary nature of the basis cannot be overlooked. It is too much determined by mere accidents of budgeting in spite of attempts to clear away abnormalities of expenditure. But even if a normal surplus can be agreed at the moment, it tends to be obscured or to disappear in the budgets of succeeding years. How could a contribution be levied in later years on the basis of a so-called normal surplus which did doubtless once exist and might be said to be implied in the economic life of the province, but which in fact had disappeared to be replaced by a totally different surplus or perhaps by a deficit? The best argument for the basis of realised surplus was that, when originally recommended, it did recognise existing facts, that it appeared to leave all the provinces collectively with improved finances and each individual province with a surplus, and that it proceeded upon the principle of creating the minimum of financial disturbance in introducing the Reforms scheme.

14. But these advantages can be secured by another solution, which after careful consideration we think is less open to question. It must be noted that even if the original classification of sources of revenue in the Montagu-Chelmsford report is strictly adhered to, each one of the provinces gains something in revenue, while some gain very substantially, in consequence of the introduction of the Reforms scheme. If our recommendation as to General Stamps is accepted, the net increase in the total income of all the provinces taken together works out at 18, 50 lakhs. These additional resources represent what the central government loses and the provinces gain under the redistribution. Some part of them the former may reasonably retain and the latter forego, so long as contributions to the central government remain necessary. Even those provinces which were found at the Simla conference to be in deficit secure some improvement in their revenues under the original classification, an improvement which will of course be increased by the addition of General Stamps. It has been urged upon us that this increased spending power will in fact be swallowed up by the higher cost of administration, by improvement of old services, or by inauguration of new. At this stage, however, we are considering merely the revenue side of the account. These



future liabilities would have had to be faced by each province, if no Reforms scheme had come. Each province is the better able to face them by reason of the additional resources it has secured. There is the advantage that the figures of normal revenue laid down at the Simla conference, have been submitted to local governments, and with minor amendments, which we have been able to accept, are agreed as arithmetically correct. We propose, subject to the limiting consideration referred to in paragraph II, to assess the initial contributions on this increase of spending power in the provinces. The proposal has the merit of proceeding on the lines of minimum disturbance of the financial position in each province. It will enable us to comply with the requirements of leaving each province with a surplus, and of inaugurating the new Councils without the necessity of resort to fresh taxation.

15. It is of importance to realise the nature of this transaction. In the first place it implies no judgment on the merits of previous financial settlements with any province. The increase in revenues comes to the provinces as a windfall, or as a bye-product of a constitutional change. It is not due, as financial settlements have been in the past, to consideration of the financial needs of individual provinces. It cannot properly be quoted as an admission of financial inequalities or as an act of tardy justice to the provinces that gain by it. Clearly it has come about from political and not primarily from financial motives. It originates in the desire to secure a greater measure of devolution in the provinces, and in the endeavour to draw for this purpose a defensible line of financial partition between local governments and the Government of India. While we consider that a windfall of this nature affords a suitable basis for initial contributions by the provinces, it is not surprising to find that its application requires some modifications in view of individual circumstances.

Secondly, on this basis the system of contributions appears in a less invidious light. The central government in the course of a political reconstruction gives to each of the local governments some, and to some local governments a very considerable, increase of spending power. Finding itself in a deficit as the result of this reconstruction, it withholds from each province a certain proportion of the increased resources which it is intended that the province should eventually

obtain. The central government does not come in as raiding the hard-won surplus of a province ; nor ought the central government to be represented, if our proposal be accepted, as the pensioner of the provinces. It can hardly be contended that a province, which has at all events decidedly improved its finances as a result of the change, has valid ground of complaint, if it does not obtain immediately the full increment which it may subsequently realise. In the cases of the provinces that gain most, it would hardly be possible for any such province to spend in the first year the whole of its suddenly increased resources ; and if it were possible, it would be financially undesirable. We think therefore that this basis affords less scope for controversy and may be accepted as both more logical and more equitable than the plan of the Montagu-Chelmsford report.

16. A detailed calculation (of which copies are being handed to the Government of India) has accordingly been made, to ascertain the net additional revenues with which each province will be endowed by the new allocation of resources. Starting on the assumption that our proposal about General Stamps will be adopted, we have worked on the figures of normal income which were accepted at the Simla conference and on figures similarly accepted when we came to tabulate the expenditure which will be transferred to and from the provinces. We took the calculations with us on tour, discussed them with the officials of each province, and made several corrections at their instance. The figures of increased spending power on which we ultimately acted may be regarded as agreed figures. Certain provinces urged that they are unduly favourable to our argument, as the great rise this year in the income-tax receipts means a correspondingly greater loss to local governments when they cease to enjoy a share of those receipts. Precision however clearly demands that all our standards should be based on figures for the same year ; and there would be no advantage in elaborating a series of normal statistics different from those which were specifically prepared to assist us in our enquiry. We were also pressed to make allowances for schemes of future expenditure to which special importance was attached ; but to this we have been unable to accede, as it is not our task to make budget forecasts.

# REPORT OF THE COMMITTEE ON FINANCIAL RELATIONS.

17. Having arrived in the manner indicated at the extra spending power which will accrue to each province, we first considered the possibility of securing the All-India deficit by an even rate on all the provincial figures. So far-reaching, however, is the disparity in the financial strength of the provinces that even this apparently equitable arrangement would in some cases have caused hardship. The extreme case would be that of a province which has been depending largely on doles from the central exchequer ; and difficulty arises wherever the provincial revenues are so pinched that the new resources have had to be seriously discounted to provide for the normal expenditure. We have therefore had to consider each province on its merits, relying both on the abundant statistical information which was placed at our disposal and on the insight which we gained into the general situation by our local consultations with the best expert opinion. Our recommendations may be conveniently set out in the following statement, which explains itself when read with the succeeding paragraphs :—

Province.	Increased spending power under new distribution of revenues. <i>In lakhs.</i>	Contributions as recommended by the Committee. <i>In lakhs.</i>	Increased spending power left after contributions are paid. <i>In lakhs.</i>
Madras ...	5,76	3,48	2,28
Bombay ...	93	56	37
Bengal ...	1,04	63	41
United Provinces	3,97	2,40	1,57
Punjab ...	2,89	1,75	1,14
Burma ...	2,46	64	1,82
Bihar and Orissa	51	<i>Nil.</i>	51
Central Provinces	52	22	30
Assam ...	42	15	27
	18,50	9,83	8,67

18. The provinces which caused us most anxiety were Burma and Bihar and Orissa. In the former the coming improvement in its revenues has been largely discounted by the heavy commitments necessary to give Burma the reasonable administrative conveniences which it now lacks. The province, as we have satisfied ourselves, is far behind

India proper in what its government does for the people. Profits flowing from the rice control scheme, and a wise outlay of borrowed capital, should enable rapid progress now to be made; but the heavy recurring expenditure which development entails will be more imminent than the new income which it will yield. We are convinced that a very substantial share of the surplus revenues of this province should be left free, and our calculations have led us to fix on them only about  $6\frac{1}{2}$  per cent. of the total deficit; this happens, as will be seen below, to equal what we determine as the standard ratio of contribution. In Bihar and Orissa the local government is quite the poorest in India, and very special skill will be required in developing its resources. Heavy initial expenditure lies in front of what is still a new province; and there is a wholly abnormal want of elasticity about its revenues. We cannot advise that any share of the deficit should be taken from Bihar and Orissa in 1921-22; and we expect that the province will be sufficiently burdened by having to work up to its standard ratio of contribution in the same period as the rest of India.

19. The two provinces which come next in difficulty are the Central Provinces and Assam. They have a small margin at the best of times, and their need for development is great. The former has a more rapidly expanding revenue than the latter, but on the other hand its finances are more liable to disturbance by famine. On the whole we do not feel that it would be just to ask more than roughly 40 per cent. of their windfall in both cases, and we have based our recommendations accordingly.

20. The special treatment of these four provinces left us with 882 lakhs to allocate among their five richer neighbours; and this sum would be secured by a flat rate of about 60 per cent. on their new revenues. After the most careful scrutiny of their various peculiarities, we see no marked necessity for differential treatment *inter se*. In Madras and the United Provinces the windfall is so vast that it could not be employed profitably for several years. On the other hand their revenues do not promise any remarkable elasticity, economy has been strictly practised, and considerable arrears of administrative progress are now due. In the Punjab also the windfall is large and balances are full, while here the revenues move

upwards with marked ease. The position is less simple, for diverse reasons, in Bombay and Bengal. The former has attained a scale of expenditure far above the Indian average, and the pace of expansion of its revenues is distinctly higher than in any other province. We believe that it could without inconvenience forego the greater part of its new resources at the outset, and help the less fortunate provinces from its own abundant balances. But we hesitate to differentiate it prejudicially from the other richer provinces. Bengal on the other hand has a low scale of expenditure and an inelastic revenue, and it will receive only a very moderate start in its new financial career. But its size, intrinsic wealth and general economic possibilities prevented us from treating it more favourably than the other provinces in this category.

21. On a general view of the table the heavy contributions of Madras, the United Provinces, and the Punjab doubtless call for comment. Between them these three provinces have to bear  $35\frac{1}{2}$ ,  $24\frac{1}{2}$ , and 18 per cent. respectively, of the total initial contribution, making 78 per cent. of the whole. Conversely the light assessments of Bengal and Bombay, contributing  $6\frac{1}{2}$  and  $5\frac{1}{2}$  per cent. respectively of the levy, will be noticed. But the character of the transaction as described above must be borne in mind. If the contribution represented some new and additional burden extracted from the wealth of the provinces, objection might fairly be taken. But it really amounts to the requirement that Madras is called upon to content itself in the initial year with an improvement in its revenue of 228 lakhs instead of a possible maximum of 576, the United Provinces with an improvement of 157 lakhs instead of a possible 397; and the Punjab with an improvement of 114 lakhs instead of a possible 289. The weight of the contribution by the provinces is the best index to the amount of their gains, both immediate and, as will be seen, eventual under the new financial scheme. Just because immediately they are substantial gainers, they can best afford to postpone the full enjoyment of their ultimate advantages.

22. If on the other hand it is urged that some provinces, Bengal and Bombay for instance, escape too lightly under this assessment, the answer is twofold. In the first place they are light gainers in the new distribution of revenues,

Bengal having a gross gain of 104 lakhs and Bombay of 93. Secondly, we have not overlooked the claim of certain provinces to exemption from the levy in virtue of their indirect contributions through customs and income-tax to the Government of India. While this claim is often over-stated and exaggerated, we recognise that provinces with commercial capitals such as Calcutta and Bombay make larger contributions through these channels than purely agricultural provinces; and it will be noticed that those provinces where payment to the Government of India through customs and income-tax is presumably highest, make a light contribution to the provincial levy.

## CHAPTER IV.

### THE STANDARD CONTRIBUTIONS.

23. Our recommendation as to the ratio on which the provinces can properly be called upon to contribute to the deficit of the Government of India in the first year of contribution (paragraph 17 above) is based, as already stated, upon consideration of their present financial positions and of the immediate improvement which will be effected therein by the re-distribution of revenues under the Reforms scheme. This ratio is not intended in any manner to represent the ideal scale on which the provinces should in equity be called upon to contribute; nor is it possible that it should do so. In making our recommendation as to the initial contributions we have had to consider established programmes of taxation and expenditure, and legislative and administrative expectations and habits, that cannot without serious mischief be suddenly adjusted to a new and more equitable ratio of contribution widely different (as an equitable ratio must admittedly be) from that of the past. It is accordingly inevitable, if such mischief is to be avoided, that the ratio for initial contributions should bear little relation to that which would be ideally equitable. But an initial ratio of this nature can only be defended as a measure of transition. It is necessary, but it is necessary only in order to give time to the provinces to adjust their budgets to a new state of affairs; and we are clearly of opinion that no scheme of contribution can be

satisfactory that does not provide for a more equitable distribution of the burden of the deficit within a reasonable time.

24. The ideal basis for such an equitable distribution can be stated with some certainty. To do equity between the provinces it is necessary that the total contribution of each to the purse of the Government of India should be proportionate to its capacity to contribute. Unfortunately the application of this principle in practice presents many difficulties.

25. The total contribution of a province to the purse of the Government of India will consist in future of its direct contribution towards the deficit, together with its indirect contribution (as at present) through the channels of customs, income-tax, duties on salt, etc. Evaluation of the amount of this indirect contribution involves an exact arithmetical calculation of the proportion of the total sum collected under each of these heads of revenue which is properly attributable to each province. For such a calculation the statistical information available as to the distribution of the revenue between the provinces is not adequate. Under the head of customs, the locality in which dutiable articles are consumed cannot be traced with sufficient accuracy; under that of income-tax, questions of the utmost complexity arise as to the true local source of the income assessed,—questions which the information in the hands of the assessing officers does not enable them to answer. We have nevertheless carried our investigation into this matter as far as available information permits, and by means of an examination of the statistics concerning the distribution of articles which have paid customs duty, and of those concerning the place of collection of income-tax, together with a review of the more general circumstances of the economic life of the provinces, we have found it possible to arrive at an estimate of the weight which should be given, in fixing the basis for equitable contributions by the provinces, to their indirect contributions.

26. Turning to the other circumstance which must be considered in fixing the ideal basis for an equitable distribution—the capacities of the provinces to contribute—we find practical difficulties no less great in the exact arithmetical calculation of the quantities involved. The capacity of a province to contribute is its taxable capacity, which is the sum of the incomes of its tax-payers, or the average income

of its tax-payers multiplied by their number. In this connection also the statistical information available does not permit of any direct evaluation. Enquiries of much interest have been made at various times with a view to calculating the wealth of the respective provinces, or the average income of their respective inhabitants, and the results provide much useful information ; but in the absence of any general assessment of incomes, and of any census of production, they cannot be considered reliable as a direct estimate, of the quantities concerned. In the absence of any such direct estimate, various circumstances have been suggested to us as capable of serving, taken separately or together, as an indirect measure of the relative taxable capacities of the provinces. Amongst these may be mentioned gross population ; urban and rural, or industrial and agricultural population ; cultivated area ; provincial revenue, or provincial expenditure ; amount of income-tax collected ; and, more indirect, amount of salt or of foreign textile goods consumed in each province. As measures of comparison all these are open to obvious criticisms, both on theoretical and on practical grounds. We are of opinion, however, that some of them are not without their value as a substitute for the direct information which is not available and they have indeed assisted us in coming to a general conclusion as to the relative taxable capacities of the provinces. But we are also of opinion that none of them is capable of serving, either alone or in conjunction with others, as an accurate or even an approximate arithmetical measure of those capacities.

27. For the reasons given we believe it to be useless to attempt to state a formula, to serve as a basis for a standard ratio of contributions, capable of automatic application from year to year by reference to ascertained statistics. Although the formula could be stated, the statistics which would be needed for its application are not available. But we are able, after surveying such figures as are available and after close inquiry into the circumstances of each province, to recommend a fixed ratio of contributions, which in our opinion represents a standard and equitable distribution of the burden of any deficit. In arriving at this ratio we have taken into consideration the indirect contributions of the provinces to the purse of the Government of India, and in particular the incidence of



## REPORT OF THE COMMITTEE ON FINANCIAL RELATIONS.

customs duties and of income-tax. We have inquired into the relative taxable capacities of the provinces, in the light of their agricultural and industrial wealth and of all other relevant incidents of their economic positions, including particularly their liability to famine. It should be observed that we have considered their taxable capacities not only as they are at the present time, or as they will be in the immediate future, but from the point of view also of the capacity of each province for expansion and development agriculturally, and industrially and in respect of imperfectly developed assets such as minerals and forests. We have also given consideration to the elasticity of the existing heads of revenue which will be secured to each province, and to the availability of its wealth for taxation. After estimating, to the best of our ability, the weight which should be given to each of these circumstances, we recommend the following fixed ratio as representing an equitable basis for the relative contributions of the provinces to the deficit.

### *Standard Contributions.*

Province.					Per cent. contribution to deficit.
Madras	...	...	...	...	17
Bombay	...	...	...	...	13
Bengal	...	...	...	...	19
United Provinces	...	...	...	...	18
Punjab	...	...	...	...	9
Burma	...	...	...	...	6½
Bihar and Orissa	...	...	...	...	10
Central Provinces	...	...	...	...	5
Assam	...	...	...	...	2½
					<hr/> 100 per cent. <hr/>

28. This in our opinion is the ratio which the provinces should in equity be called upon to contribute after an interval of time sufficient to enable them to adjust their budgets to the new conditions. We further recommend that the interval allowed for adjustment should not be unduly prolonged. The initial ratio which we have proposed is a practical necessity, but the provinces which will be called upon to pay thereunder more than they should pay in equity, ought not to be required to bear that burden for a longer period or to a greater

# THE INDIAN CONSTITUTION.

extent than is required to prevent dislocation of the provincial budgets. We propose, therefore, that contributions should be made on the standard ratio to any deficit that there may be in the seventh year of contribution, and that the process of transition from the initial to the standard ratio should be continuous, beginning in the second year of contribution, and proceeding in six equal annual steps. The following table shows the initial, intermediate, and ultimate ratios of contribution for the seven years, in accordance with our recommendations. The initial ratio is the rate per cent. of the actual initial contributions recommended in paragraph 17 above.

*Per cent. contributions to deficit in seven consecutive years, beginning with the first year of contribution (rounded off to even halves).*

Province.	1st year.	2nd year.	3rd year.	4th year.	5th year.	6th year.	7th year.
Madras ...	35½	32½	29½	26½	23	20	17
Bombay ...	5½	7	8	9½	10½	12	13
Bengal ...	6½	8½	10½	12½	15	17	19
United Provinces ...	24½	23½	22½	21	20	19	18
Punjab ...	18	16½	15	13½	12	10½	9
Burma ...	6½	6½	6½	6½	6½	6½	6½
Bihar and Orissa ...	nil.	1½	3	5	7	8½	10
Central Provinces ...	2	2½	3	3½	4	4½	5
Assam ...	1½	1½	2	2	2	2	2½
	100%	100%	100%	100%	100%	100%	100%

29. It should be observed that, if the Government of India fulfil their announced intention of gradually wiping out their deficit, against any increase in the proportion which a province will be called upon to contribute from year to year, there will be set off a reduction in the total to be contributed.

30. The scheme of contribution that we recommend above complies we believe with the two essential conditions, that any immediate dislocation in the provincial budgets must be avoided, and that the admitted inequalities of the proportions in which, in the past, the provinces have contributed to the purse of the Government of India, must be recti-

fied within a reasonable time. The scheme is subject to the disadvantage that the ratio which we recommend is fixed, and cannot hold good for an indefinite period. We are of opinion however that it will do substantial equity between the provinces until such a period of time has passed as may be required to effect a very substantial change in their relative states of economic development, a change scarcely to be effected in less than at least a decade.

## CHAPTER V.

### PROVINCIAL LOAN ACCOUNT.

31. The future financing of the Provincial Loan Account is a less controversial subject than the others that we have had to investigate. It is commonly agreed that it is the natural result of the Reforms scheme that the provinces should for the future finance their own loan transactions, and that joint accounts of this nature between them and the Government of India should be wound up as quickly as possible. In our discussions of this subject with the provincial governments we have found little or no difference of opinion as to this, and our task has been only to ascertain the wishes of the provincial governments as to the amount of its account which each can take over on April 1st, 1921, and how soon it can take over the rest.

32. The Governments of Bengal, the Punjab, the Central Provinces and Assam signified to us their willingness to take over the whole of their respective loan accounts on April 1st, 1921; and we recommend that it should be arranged for them to do so. In some cases it was stipulated as a condition that the provincial government should be allowed to use for the purpose any part of its balance, including the earmarked portion. We see no objection to the condition, which accords with the intention expressed in paragraph 208 of the Montagu-Chelmsford report.

33. The Governments of Bombay, the United Provinces, Burma, Bihar and Orissa signified to us their willingness to take over a portion of their provincial loan accounts on April 1st, 1921, and the remainder in instalments, to cover varying periods. The Government of Madras alone expressed unwill-

## THE INDIAN CONSTITUTION.

ingness to take over any part of the account. Evidence was given before us, however, by officials of that government to the effect that they would not object to do so if the transfer could be effected by fresh credit arrangements. In view of this and of the great improvement which will be effected in the financial position of the province by the redistribution of revenues under the Reforms scheme, we are of opinion that there is no reason why Madras should form an exception to the general scheme for the transfer of their accounts which we recommend below for application to those provinces which are prepared to take over a part of their accounts forthwith.

34. In the case of those provinces, namely Bombay, the United Provinces, Burma, Bihar and Orissa, and including, as stated, Madras, we recommend that the Provincial Loan Account should be "funded," at a rate of interest calculated at the weighted average of the three rates of  $3\frac{1}{2}$ ,  $4\frac{1}{2}$  and  $5\frac{1}{2}$  per cent. now paid on varying portions of the account. Whatever portion of the account so "funded" the province is prepared to take over forthwith should, we recommend, be written off against an equal portion of the provincial balance as from April 1st, 1921: and the balance of the "funded" account should remain outstanding as a debt from the province to the Government of India. On the outstanding balance the province should pay interest at the calculated average rate, and also an annual charge for redemption enough to redeem the debt in a fixed number of years, which should not save in exceptional circumstances exceed twelve. The provinces should further have the option to make in any year a larger repayment than the fixed redemption charge.

35. The provinces in question will probably not be in a position to state the exact proportion of their respective accounts which they are prepared to take over, or the exact number of years that they will require to repay the balance, until their closing balances on April 1st, 1921, are more precisely ascertained, and also until they know what contributions will be required from them. It appears therefore that these details must be left for determination by future negotiations. We are, however, of opinion that a maximum period of twelve years is ample in order to enable any province to clear its account and that in some cases the period may with advantage be substantially reduced. We further

## II. E. LORD SINHA'S SPEECH.

consider that the fixing of a definite term of repayment and the provision of an annual charge for redemption within that term are essential in order to secure the desired clearing of accounts between the provincial governments and the Government of India.

### CONCLUSION.

36. Several other matters were referred to us in the course of our enquiry, on which a recommendation appeared to us to be outside the strict scope of our reference. We propose, however, to communicate our views upon some of them informally to the Government of India.

37. In conclusion we wish to express our indebtedness to our secretary Mr. Dina Nath Dutt, for his careful and methodical assistance in our work. We have also derived very great benefit from the association with us of Mr. G. G. Sim, C.I.E., whom the Government of India attached to us as liaison officer.

MESTON.

CHARLES ROBERTS.

E. HILTON YOUNG.

*31st March, 1920.*

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## XVIII.—H. E. Lord Sinha's Speech in the House of Lord on the second reading of the Government of India Bill, Dec. 11, 1919.

THE UNDER-SECRETARY OF STATE FOR INDIA (LORD SINHA): My Lords, the position I have held for the last few months in your Lordships' House is one of which I have been naturally and gratefully but I hope not unbecomingly proud, though I have felt oppressed with a deep sense of personal insufficiency. My Lords, these feelings reach

their culminating point to-day when it involves the high privilege of asking your Lordships to give this Bill a Second Reading. If any arts of eloquence or persuasion, were necessary for the purpose of inducing your Lordships' House to accept the general principles underlying this Bill, I would despair of the task before me, but I feel convinced that the great experiment which this Bill will inaugurate is likely to prove successful and beneficial, not only to India, but to the Empire at large. It is because I am convinced that this Bill is wisely framed to place the feet of India on a level road leading to that goal to which she has long aspired, the goal of self-government within the Empire, and to a real partnership in that great Empire which is bound together by unswerving allegiance and enthusiastic homage to our august Sovereign, in whose person is embodied all that Empire means and connotes, I repeat that it is with feelings of humble and grateful pride that I rise to make this Motion.

This Bill is the immediate outcome of the memorable declaration of policy made by His Majesty's Government on August 20, 1917. The whole of that declaration is embodied in the Preamble of the Bill; it has been read to your Lordships several times already, and I will not weary your patience by reading it again. It is the first step forward that Parliament is asked to take in fulfilment of that pledge, and I confidently hope that your Lordships will agree that in taking this step you will be taking a generous and perhaps a bold step, and yet one which is neither rash nor hasty, nor unnecessary or ill-considered.

My Lords, let me invite your attention for a few moments to the immense amount of care and critical examination from every possible standpoint which have gone to the elaboration of this measure. The matter was first broached when Mr. Austen Chamberlain was still Secretary of State for India, and Lord Hardinge, after full consultation with the heads of the various Local Governments, put forward certain proposals for post-war reforms. Soon after Lord Chelmsford assumed office, in 1916, the need for a public declaration of policy as to the future of India was recognised by the Secretary of State and His Majesty's Government. The Government of India invited Mr. Chamberlain to visit India and confer with them as to the practical steps to be taken in pursuance of this

policy. The policy was declared in August, 1917, and Mr. Montagu, to whom on his acceptance of office the Government of India had transferred their invitation, went to India in the autumn of that year. Before he left he had already been furnished with the results of prolonged and thorough investigation by his advisers of the India Office as to the possible lines of advance.

The Secretary of State and the Viceroy spent the cold weather of 1917--18 in a detailed inquiry in India, in the course of which they visited all the larger centres in the provinces and had the benefit of the fullest consultation with the heads of Local Governments and the members of the Government of India and of non-official opinion of all shades. The result of this inquiry was the Montagu-Chelmsford Report, published in July, 1918, and this was further supplemented by the minute and careful investigations carried on throughout India by the two Committees presided over by the noble Lord, Lord Southborough. These investigations resulted in two further Reports—the Franchise Report and the Functions Report. And may I pause here for one moment to pay a humble tribute to Lord Southborough and the members of his Committee for the valuable work done by them, without which it would have been impossible to proceed with, and indeed to frame, this Bill.

These three Reports, the Montagu-Chelmsford Report, the Franchise Report, and the Functions Report, have been subjected to exhaustive examination by the Government of India, the results of which you have before you in three of their published despatches. You have also two other published despatches of the Government of India dealing with various special aspects of the problem. Yet another Committee, presided over by the noble Marquess, Lord Crewe, closely examined the question of the changes to be made in the system of home administration of Indian affairs, and you have the Report of that Committee before you. Finally the whole matter has been investigated and all the available material re-examined by a Select Committee of both Houses, who, after many weeks of hearing of all the evidence available in this country, both official and non-official, Indian and British, and after patient scrutiny of all the documentary evidence, have given you their mature con-

clusions in the shape of this amended Bill and of their Report upon it.

This last Report is, I venture to think, of almost equal importance as the Bill itself, and will be looked upon in India quite as much as the Bill as the charter of our progressive liberties. And here again I must ask your Lordships' leave to be allowed to voice the general appreciation of the uniform courtesy the patient industry, and the ripe experience which the noble Earl, Lord Selborne, as President of that Committee, brought to bear upon its investigations. Surely, my Lords, no one in view of all these facts can contend with any show of reason that the Bill which you are now asked to read a second time has been insufficiently explored. This Bill is the natural and inevitable sequel to the long chapter of previous legislation for the better government of India. And for that purpose I will confine myself briefly to the Statutes of 1861, 1892, and 1909.

From 1837 to 1861 the Governor-General in Council was the sole administrative as well as the legislative authority for British India. The Indian Councils Act of 1861 for the first time associated with the Governor-General's Executive Council and the Executive Councils of the two Presidency Governors a small number of additional members, half of them being non-officials, for the purpose of making laws. But these Legislative Councils were no more than advisory committees for that purpose only, and had none of the other attributes of legislatures. Similar provisions were subsequently made for the province of Bengal and the North-West Provinces. A further step was taken by the Act of 1892 which increased the numbers of the Legislative Council slightly, but what is more, enabled rules to be made regulating the course of nomination of non-official members in a manner which contained the first faint beginnings of the representative principle. Further it gave liberty to ask questions and to discuss, but only to discuss, and not to vote or to move resolutions upon the financial statement.

Then came Lord Morley's Act of 1909, which still further enlarged the Legislative Councils both of the Governor-General and of the provinces. But it did more. It introduced for the first time the principle of election, though not yet direct election, as the means of constituting a portion of the



non-official members. Further it gave the Councils power to move resolutions upon matters of general public interest, and also upon the Budget and to ask supplementary questions. The resolutions, however, were to be advisory in character, which the Executive might adopt or reject at its discretion. We see, therefore, that for a period of nearly sixty years there has been a steady increase in the number of members for the Legislative Councils, the introduction of the principle of representation by election, and a progressive increase of the functions assigned to these Legislatures, steadily tending to make these Councils more and more parliamentary in nature, character, and influence.

The Bill before your Lordships' House intends to make these Councils even more parliamentary in character by a further increase in numbers with the object of making them as completely representative of the whole population as is possible and by increasing their functions to the largest possible extent that existing circumstances will allow. Since Lord Morley's reforms were inaugurated ten years have passed—ten fruitful years of experience and rapid development—within which fall the four crowded years of the great struggle in which India has, like other parts of the Empire whose existence was at stake, borne her share. Of the part played by India in the war I do not propose to speak to-day. Her record is known to your Lordships and I will venture only to say that no words of mine are needed to give lustre to that record. Moreover, I should be creating an absolutely false impression if any remarks of mine gave colour to the impression that India desires or demands this measure as a reward for her war services. In my view this Bill must stand upon its own merits—upon the question whether or not the great experiment which it seeks to initiate is an experiment on right and proper lines.

There is no doubt that as a result of the war there has been a great advance in the *status* of India. She has been privileged through her own representatives to take an equal part with the British Dominions Overseas in the Imperial War Conference, and also in the Peace Conference in Paris, and she has been admitted as an original member of the League of Nations. These experiences have further quickened her sense of national unity and development, a sense which

has been steadily fostered for many years by common allegiance to the same beloved Sovereign, by being amenable to one code of laws, by being taxed by one authority, by being influenced for weal or woe by one system of administration, and by being urged by like impulse to secure like rights and to be relieved of like burdens. My Lords, it is no longer possible to doubt this rapidly growing sense of nationality, any more than it is possible for India to stand aside unchanged from the turmoil of development and growth and reconstruction which has been shaking the world for the last five years.

My Lords, you have been deluged with a mass of Blue-books and Reports on this subject, and I do not deny that in its details the subject is one of great complexity, but I would submit to your Lordships that the real issue is a simple one. It is this. Do you intend to keep India in leading strings, or do you believe the time has come when Indians themselves should be given some control of policy and should be in a position to make a start at least on the path of self-government?

The present system of Government in India is in essentials identical with that which obtained sixty years ago, and indeed earlier. It is a purely official government, centred in the India Office, able and entitled to impose its will in every detail on the people, the administration of whose affairs has been entrusted to it by Parliament. I am deeply conscious of the debt which we owe to the Government of India, to the Local Governments, and to the untiring and devoted efforts of the great services which they employ, and which have been directed with an energy and singleness of purpose, probably unequalled in history, to the welfare and advancement of the people committed to their charge, and with a success in securing that advancement which certainly no premature attempt at self-government could possibly have achieved.

But, my Lords, during these sixty years you have had Legislatures set up in the provinces, and, including the Central Government, now no fewer than ten in number, gradually increasing in size, gradually acquiring more power to criticise the action and policy of the Executive and gradually becoming more and more representative of public opinion. But their functions are confined, broadly speaking, to criticism.

I do not deny that the influence which they have exercised during the last ten years has been great, nor do I assert that official Governments have pursued systematically, or even frequently, a policy of flouting the wishes of the non-official members. They have done nothing of the kind, I believe that, so far as has been consistent with the discharge of their responsibilities to Parliament, the Government in India and the Secretary of State in this country have been studiously careful to pay increasing deference to the wishes of the representatives of the people in the Councils. But, my Lords, what these Councils do not possess, and what the representatives of the people ask for, is some guarantee that the Executive will conform to their wishes when they represent the real desire of the majority ; in other words, they want to advance from the stage of influence to that of control, while steadfastly maintaining their loyalty to the King-Emperor as an integral portion of the British Empire.

In so far as these demands postulate complete self-government for India at once, or even a material weakening of the connection which ensures for India the responsibility of the British Parliament for the maintenance of peace and order and for its immunity from external aggression, I, for one, emphatically repudiate them ; and I am convinced that in so doing I am voicing the sentiments of the vast majority of my countrymen. India is not yet fully equipped for complete self-government, and I will not be so rash as to attempt to predict when she will be. But of this I am certain, that so long as the present system continues she never will be fit for self-government. It is only with experience of actual responsibility that the fitness to exercise it grows. I am also certain that India is fit and ready to-day to embark, and to embark with every hope of success, on the experiment which this Bill proposes, and that this Bill is the only logical and necessary means for carrying out the pledge given by the announcement of August 20, 1917, as the Joint Committee has reported to your Lordships.

This Bill will not and is not intended to set up a final and permanent constitution for India. It provides for a period of transition. How long that period will last, as I have already said, I make no attempt to forecast, but while it lasts we have to provide a bridge whereby India may pass

from an autocratic and bureaucratic form of Government, which guides her destinies *ab extra*, to a form of Government whereby she will control her own destinies. We have to give the people in India at once some measure of control over the policy which dictates their laws and imposes their taxes, and this we have to do by a system which will enable a sure judgment to be passed on the use or misuse to which that control is put, and an orderly and justifiable advance to be made.

Let me try and explain very briefly the means proposed in this Bill, with these objects in view. We start by dividing revenues and demarcating the spheres of government as between the Central Government and the provinces. We assign to the Central Government unquestioned authority over certain administrative heads, such as the defence of the country, its railways, tariffs, and other activities which cannot be localised ; for these it legislates, for these it provides funds, for these it supplies and controls (either directly or through the intervention of provincial governments) its executive agency. Certain other administrative heads are handed over to the Provincial Governments, which assume within their own areas full and complete responsibility for financing and administering them. There are limitations of course—there must be limitations—on the authority of Provincial Governments in so far as they remain agents of Parliament, but I need not now confuse the broad outlines with these.

Of these matters which thus become, in the language of the Bill, "Provincial subjects," a further division is made, and while for one portion of them the official side of the Government retains responsibility, the other portion is handed over to the administration of the Governor acting with Ministers chosen from the elected members of the Legislature. Over the matter compressed within this latter portion of the field the Legislature will be given a very real control ; legislation for them will be governed by the wishes of the elected majorities, and it will vote the supplies for them. For the administration of these subjects the Ministers will be directly responsible to the Legislature, and though they are liable to be overruled by the Governor if he considers that his endorsement of the policy proposed is inconsistent with the discharge of his responsibilities for the administration of the "reserved" sub-

jects or for the peace and tranquillity of his province, they can only remain in office if they are prepared to support and defend in the Legislature any action relative to the subjects in their charge, with the full knowledge that such support or defence, if the Legislature calls their acts in question, may lead to an adverse vote and possibly to resignation or dismissal.

So much for the immediate effects of the Bill as planned. But as I have said, the Bill attempts—and I submit successfully attempts—to provide for progress. It legislates for a transition from bureaucratic to self-government. And the progress is to be effected by the simple means of gradually enlarging the field made over to the administration of Ministers by the gradual transfer of more and more subjects to their administration until at length the time arrives when there are no subjects remaining “reserved.” I have said more than once that I make no attempt to predict the date when that consummation will be reached. Obviously it cannot arrive until you have throughout India a widely diffused and trained electorate capable of formulating clear and wise conceptions of policy and of selecting representatives who will be capable of guiding and voicing the view of the population at large. But here, again, it is by actual experience and by no other method that such training can be given.

If it is necessary, in order to train administrators, to give the Legislatures real work to do and real responsibilities to shoulder, it is no less necessary, in order to train the electorates and to teach the value and the proper use of a vote, to give the representatives selected as the result of that vote the opportunity of controlling the course of the administration in a way which will be clear in its results, be they good or bad, to the electors. I say “be they good or bad” advisedly, for it is human experience that success is achieved by means of failures, and that mistakes, if not irretrievable, are the best of lessons, and it would be idle to suppose that Indian administrators will spring into being full fledged and infallible. If this were to be expected there would be no justification for this half-way house with all its complications of structure. We expect mistakes, but we claim that we have provided in this Bill every reasonable safeguard and every device possible to minimise the chance of their

occurrence or the seriousness of their results when they do occur. In the first place, we reserve in the charge of an agency still responsible to Parliament those services or heads of administration upon which the safety and peace of the country depend, and we provide means by which that agency, despite a large non-official majority in the Legislatures, shall be enabled unflinchingly to secure the legislation and the supply which it regards as essential to the discharge of its responsibility. In the second place, we ensure, by the association of the new Ministers with an official element in the Executive, that the experience and knowledge acquired by long traditions and practice of a great and successful Service shall be at the disposal of the Ministers when they formulate their own policy. And, lastly, we ensure by the relations which are to subsist between Ministers on the one hand and the Executive Council on the other, that the latter will have in their deliberations the advantage of friendly counsel and a knowledge of the wishes and susceptibilities of the people.

This is the plan which has been given the somewhat terrifying name of dyarchy. For myself I should have preferred to call it a system of specific devolution. Your Lordships will not have failed to observe that the Joint Committee, after many weeks of patient examination of the matter from every point of view, has reported that the plan proposed by the Bill interprets with scrupulous accuracy the policy announced on August 20, 1917, and that it is the best means of carrying out that policy. By the scheme of the Bill they meant in that connection primarily its basic principle of division of functions and consequent demarcation of the source of authority which is to lie behind the provincial executives. But it would be foolish to attempt to disguise from myself or from your Lordships' House the fact that this principle is regarded with misgivings by many persons who are in full accord with the general policy which the Bill seeks to carry out. The objections to this principle are obvious. But is there really any practicable alternative?

Various alternative schemes have been put forward with greater or less authority. The first in point of time was the scheme of the Congress and the Moslem League which was published before the conception of the Montagu-Chelmsford Report. More than one alternative was suggested by the

official reports of the various Local Governments on that Report ; another scheme was formulated by five heads of provinces after the Local Governments had discussed the proposals officially ; and, finally, the Joint Committee had yet another alternative scheme laid before them by representatives of the Indo-British Association. But apart from variations of detail, all these alternative schemes are in essence the same. They purport to provide an united or unified Executive, and to proceed on the basis (as one authority has put it) of giving some responsibility to the Legislatures for all matters of government rather than full responsibility for some. They postulate a Council or executive body consisting in part of officials and in part of members of the Legislatures, and all holding office for a fixed period. They reject the device of dividing functions and subjects, and they propose that the members of this Government should preserve joint responsibility for all the actions and decisions of the Government in the ordinary and usual manner of Cabinet government. They postulate that the non-official members of the Government will be selected as representing the views of the majority of the Council, and will in practice "necessarily be influenced by the opinions of the Legislative Council" (those words I quote from the Memorandum of the five heads of provinces). This fact they urge will secure that the Government as a whole in its decisions on all matters will to some extent be responsible to the Legislatures, whose wishes will necessarily strongly influence if not shape those decisions. Lastly, progress towards fuller and more real responsible government is to be achieved on the one hand by gradually increasing the number of members of the executive taken from the elected members of the Councils, and by gradually therefore handing over to such members a larger and larger range of portfolios, and on the other hand by a gradual increase in the deference paid by the executive to the wishes of the Legislatures. I believe that is a fair description of the essential features of all the various alternative schemes which have been put forward.

The problem can be simply stated—it is to give a measure of control to representative Assemblies in India over the policy and actions of the Government, and to give it in such a way that the control can be gradually increased as and when those to whom it is entrusted exhibit their fitness for an increase,

but in such a way that each increase comes by an ordered and controllable process, and not *per saltum*, so that throughout the process may be one of evolution, and neither in its first stage nor at any subsequent stage one of revolution.

That is the problem. Now, are you going to solve it by giving to Parliamentary institutions in India full control—or practically full control—over a certain defined field, or by giving at once some control over the whole field. I am confident that reflection will show that the latter alternative is not only not a good method of achieving the object in view, but that it is not a practicable alternative, and, if it were introduced, it could have only one of two results—either a complete failure to establish any real responsibility to Parliamentary institutions or Councils in India, or to a paralysis of Government which would lead, and lead rapidly and inevitably, to complete control by Legislatures in India and a complete ouster of the authority of this Parliament.

For what is the underlying hypothesis in all these schemes for a unified Government? It is nothing more nor less than a divided allegiance to Parliament on the one hand and the Provincial Legislature on the other, and a division of allegiance which affects or may affect every single issue which comes before the Government. The official members of the Government will be responsible to Parliament, under whose authority and in whose name they hold their office; the non-official members of the Government will, as members of a United Government, be similarly in theory responsible to Parliament. But they will, remember, be “necessarily influenced by the opinions of the Legislative Council” from whose ranks they are elected. If the official members of the Executive Government, in deference to orders received from Whitehall or Simla, or in fulfilment of what they conceive to be their responsibility to Whitehall and Simla for the good administration of the Province, adopt a policy of which the majority of the Legislative Council (whether rightly or wrongly) disapprove, what is to be the attitude of their non-official colleagues? Assuming that their view coincides with the majority of the Legislature, are they to sink their difference and support their official colleagues? If they do, what has become of the element of responsibility to the Legislature? Or are



they do oppose their colleagues and withhold their support? If so, where is the unity of the Government? If, on the other hand, the official members of the Government adopt a course which they honestly believe to be inconsistent with the discharge of their responsibility to Parliament in deference to their non-official colleagues and the majority of the Legislature, they would no doubt *pro tanto* be establishing a system of Government by popular control and rendering the Executive amenable to the popular will, but would Parliament for a moment tolerate such government by abdication, and would it not rightly call to account a Secretary of State who by acquiescence in such a course might endanger the peace and good government of the country?

Again, even were such a unified system workable at the outset, is the road to progress in the grant of responsibility which it opens a satisfactory road? As I have stated, its supporters urge that development lies in the line of increasing the number of non-official Councillors, with a consequent increase in the number and scope of the portfolios committed to them, of increasing acquiescence in the wishes of the Legislature and a rarer resort to the veto. With the two latter of these suggestions I have just dealt. As regards the two former processes, since a unified Executive must as such be answerable for its actions to Parliament and subject in the last resort in all matters of administration to Parliament's control, I fail to see how any increase in the number of non-official members of such an Executive or any enlargement of the sphere of their administrative activities can alter the character or lessen the reality of that control. This particular point has been dealt with much more clearly and more cogently than I have been able to do by the Government of India in their Despatch of March 5 of this year, and I would only refer to Paragraphs 18 to 24 in that Despatch, which is published as Command Paper 123. For these considerations I submit that your Lordships will accept without hesitation the opinion of the Joint Committee on this the fundamental point of the whole Bill.

Before coming to the provisions of the Bill itself, I venture to draw attention to two particular points as regards the form of the Bill. In the first place, your Lordships will have seen that the main provisions for constitutional changes are set out

in the body of the Bill itself, and by means of a Schedule—the Second Schedule to the Act—these changes are to find their proper place in the main Act (the Act of 1915-16), so that automatically consolidation will follow. That is the plan of the Bill, and it has commended itself to the Joint Committee, and I trust will commend itself to your Lordships also. The second point in connection with the frame of the Bill is this. The Bill itself outlines the main features of the constitutional changes. It leaves these changes to be worked out in detail in the form of rules. Some objection has been taken to this latter feature, but here again I would refer to the White Paper which gives in full the reasons for this form of legislation in this particular case.

Firstly, it is in accordance with all previous precedents. The matter was debated on the last occasion when Lord Morley's Act came before your Lordships' House, and, as I read the debates, it was generally accepted that that was the proper way of framing the Bill, leaving the details of the constitutional changes to be worked out by the authorities in India, subject, however, to the control of Parliament. Secondly, it secures reasonable dimensions for the Bill, and makes elasticity possible. Thirdly, it is the only method possible for the introduction of new constitutional forms expressly devised for the conditions of a transitional stage. Fourthly, it enables different provisions to be made for different provinces; and, fifthly (and this is the feature to which I desire to draw special attention), the control of Parliament is fully secured for the exercise of the rule-making power by Clauses 33 and 44 of the Bill to which I crave your Lordships' particular attention.

Clause 33 deals with the Rules to be made by the Secretary of State himself for the purpose of relaxing his powers of superintendence, direction and control. That clause enacts that Rules with regard to subjects other than transferred subjects shall be laid in draft before both Houses of Parliament, and therefore shall not come into operation until they have been approved by both Houses of Parliament. All other Rules shall be subjected to the negative process of being made, of being laid on the Table of the House, Parliament of course to be at liberty to \*petition His Majesty to annul the Rules, on which the Rules shall be annulled.

Clause 44 deals with by far the larger majority of Rules which are to be made under this Act, namely, Rules by the Governor-General in Council. These Rules again, are divided into two categories—first, Rules which are only to be subjected to the negative process of being laid before Parliament after they come into operation, but being liable to be set aside or annulled by petition to His Majesty in Council by Parliament. It is also provided that the Secretary of State may direct that any Rules to which the section applies shall be laid in draft, and that they shall not come into operation, before Parliament had approved them by positive resolution ; and the Secretary of State in exercising that discretion will undoubtedly be advised by the Standing Committee of both Houses that the Joint Committee recommends, or by the Joint Committee itself if Parliament chooses to re-appoint it, for the purpose of going through these Rules. I submit, therefore, that the criticism that it is either dangerous or inexpedient to leave so much to be done by Rules is neither just nor fair.

Having dealt with the fundamental principle involved in the Bill, I will not detain your Lordships long with the other features as contained in the separate clauses, especially as the Report of the Joint Committee has dealt with them clause by clause and given the reasons not only for the clauses themselves but also for such changes as they have introduced. The Bill, following the general plan of the Montagu-Chelmsford Report, starts with Provincial Governments, since it is in that sphere chiefly that the scheme is to be developed. Clause 3 sets up in the eight major provinces of India a Governor in Council—a form of Government which has long been in force in the three Presidencies. But the new Local Governments are not merely to be Governors in Council—they will consist of the Governor in Council (whose functions and constitution will remain unchanged) and of the Governor acting with Ministers, appointed from the elected members of the Legislative Council and holding office during the Governor's pleasure. To the Governor in Council will be entrusted the responsibility for reserved subjects, and the Governor and Ministers will be responsible for the transferred subjects. All matters which in a Council Government would normally come before the Council—that is, everything which is not of purely

departmental or minor importance—will, as a general rule, come for discussion before the Governor, his Councillors, and his Ministers sitting in conclave. But the decision on reserved subjects and the responsibility for the decision will rest with the Governor in Council, while the decision and the responsibility for the decision on all transferred matters will rest with Ministers, subject to the Governor's intervention and control if he feels it incumbent upon him to reject their advice. This is the Provincial Executive.

The Legislative Councils in all the eight Provinces are to be considerably increased in size and will acquire for the first time a substantial (70 per cent.) elected majority. The Governor will not be a member of the Legislature; each body will have a non-official President and Deputy President, to be elected by itself subject to the Governor's approval; but for the first four years the office of President is to be filled by a nominee of the Governor. Each Council will normally have a life of three years, though the Governor may at any time dissolve the Legislative Council. The powers of Provincial Legislatures will as regards legislation be much as they are at present, but in view of the fact that the scheme contemplates an almost complete abrogation of the existing executive orders which require every Bill (save those of purely formal or minor importance) to be submitted to the Government of India and the Secretary of State for previous approval before introduction—a system which has naturally not conduced to initiative and independence in provincial legislation—the necessity arises for somewhat expanding the scope of the existing statutory provisions which require the previous sanction of the Governor-General to certain classes of provincial Bills, so as to ensure that the Provincial Legislatures shall not infringe on the sphere which is reserved for the Central Government.

Outside matters of legislation, the powers of the Councils are to be enlarged—or perhaps it would be more correct to say that the Bill reverses the position which these bodies have hitherto held. Hitherto Legislative Councils in India have been presumed by the law to have no functions except those which the law has specifically allowed them. As I pointed out a short time ago, Legislative Councils in India were at the time of their creation strictly confined in their duties and

powers to the business of discussing and passing legislative measures. Little by little the scope of their activities has been increased by the grant of further specified powers. Under this Bill they will be assumed to possess all the normal attributes and powers of a legislative body except those which are definitely withheld, or the use of which is restricted.

The most important change which results from this position is that for the first time the provincial budget will be voted by the Legislative Council—they will now actually vote and sanction the appropriations proposed by the Executive. All they can do at present is to vote about the budget ; that is to say, they can move and vote upon resolutions recommending changes in the Government's financial proposals in the year ; but the Government has usually been in a position with the nominated majority to defeat any such resolution if it wished to do so, and in any case was in no way bound to accept it if carried ; and hitherto the annual appropriations of expenditure have required no other sanction than the *flat* of the Executive Government. That will now be changed, and the Legislatures will have a real voice in the disposal of provincial finances. It would be impossible, of course, to give them at the present stage a final and decisive voice over the whole field. A portion of the Government will not be responsible to or removable by the Legislature, and that portion of the Government must be in a position to secure the legislation and supplies it needs for the discharge of its responsibilities. It has not the natural means of an assured majority in the House, and it must therefore be given an artificial means. Thus in "reserved" finance, the Governor is empowered to neglect an adverse vote on a budget head if he certifies that the proposed expenditure is essential to the discharge of his responsibility for the subject, while in times of crisis, when perhaps a recalcitrant Legislature may decline to vote any supplies, he is empowered to authorise such expenditure as is required for the maintenance of safety and tranquility or to avoid administrative starvation.

There is a further safeguard against irresponsible action by the Legislature in the matter of supply—that certain heads of expenditure are not to require an annual vote—in much the same way as the Consolidated Fund in this country. For example, contributions payable by the Local Government to the Governor-General in Council ; interest and sinking

fund charges on loans ; expenditure of which the amount is prescribed by or under any law ; salaries and pensions of persons appointed by or with the approval of His Majesty or by the Secretary of State in Council ; and salaries of Judges of the High Court of the Province, and of the Advocate-General.

In legislation the position of the official Government is safeguarded by the provisions of Clause 13 and Clause 11 (5) of the Bill, which give the Governor power to secure the passage or rejection of Bills in certain circumstances. I do not wish to weary your Lordships with detail but I invite particular attention to these provisions and to the remarks in the Joint Committee's Report in explanation of them. They take the place of the original plan suggested in the Montagu-Chelmsford Report of Grand Committees of the Council, and I am confident that your Lordships will agree that the change made by the Joint Committee is a great improvement, and that nothing will be lost and much gained by their more straightforward plan.

The changes made by the Bill in the Government of India are much less extensive. The Indian Legislature is considerably enlarged and is now to consist of two Chambers—an Upper Chamber or Council of State of sixty members and an Assembly of 140 members, the latter with a substantial elected majority. The statutory limit on the number of the Governor-General's Executive Council is a minimum of five and a maximum of six (or six and seven if the Commander-in-Chief is included). The Bill does away with the Extraordinary Member, and assumes, as will doubtless be the case, that the Commander-in-Chief will always continue to be appointed a member of the Council. Each member of the Executive Council will be a nominated member of one or other Chamber of the Legislature, but not of both, though they will be entitled to speak in both Chambers. Like the Provincial Legislatures, the Indian Legislature is to have power for the first time to vote on certain portions of the Budget. That is to say, there will be the same provisions for a Consolidated Fund upon which they will not be able to vote ; and, further, the Governor-General will always be entitled, if he thinks necessary, to reject every vote on every item of the Budget of the Legislature.

It may be urged that this change is inconsistent with the policy which has taken no step towards introducing at this stage the principle of responsible government in the Central Government in the sense of making the Central Executive legally dependent upon or subject to the control of the Legislature. I am confident your Lordships will agree that whatever technical inconsistency there may be, the change is sound and necessary. What is the position? In the first place, there can be no question of taking away any power which the Central Legislature at present enjoys. One of the powers which it has enjoyed for the last ten years is power to propose and vote resolutions suggesting changes in the Budget statement, and this power it must retain. Hitherto the Government has been able by means of its official majority to defeat any such resolution (though even if it had failed to defeat it, the resolution would have no binding effect). But in future the Government will not command a majority in the Legislature.

Now, my Lords, which is the sounder constitutional position—the position which augurs best for a sound judgment by the proposed Statutory Commission which is to inquire into progress ten years hence and for amicable relations meanwhile, that the Indian Legislature should be able year after year, with no sense of responsibility flowing from a knowledge of practical consequences of its vote, to vote by an overwhelming majority resolution after resolution recommending specific alterations in the Budget, which the Government is forced to ignore; or that the Legislature should be legally responsible for passing the Estimates and legally accountable for the results of any modifications they may vote? I admit that the practical difference between the two positions is not great, for if you will look at the clause—it is Clause 25—you will see that the Government is necessarily given the fullest powers to reject adverse votes, since its responsibility is not to the Indian Legislature but to this Parliament for the proper administration of its charge. The change is really one of form, but I do not seek to disguise its importance on that ground. It is an important change, but one which I am convinced is the logical and necessary result of constituting a representative Central Legislature.

I have been a member of the Governor-General's Legislative Council, it is true in an official capacity, but none the

less closely associated with all the non-official members. I can assure your Lordships that the cleavage which has, unfortunately, shown itself so often of late between the non-official and the official members of that body is largely due to the non-officials' sense of aloofness from the real difficulties and decisions of the Government which the present position has engendered. They felt—they can hardly help feeling—that they are outside the machine and are not a real part of its working. I am confident that all that is required to obliterate that cleavage is an admission, with whatever safeguards and checks that may be found necessary, that the Legislature and all its members are an essential and working part of the machinery of Government, that the action or inaction of every member influences the working of the whole.

Allow me to draw your Lordships' attention, so far as the Government of India is concerned, to one more clause, and that is Clause 26, because there also a new feature is introduced in place of the old device of the official *bloc*, for the purposes of enabling the Governor-General to obtain the legislation which he considers necessary for his purpose. The Governor-General is able to pass any law which he thinks necessary for the safety and tranquillity of India, provided that the ordinance will require the sanction of His Majesty before it becomes law. Of course, the power of this ordinance, in cases of emergencies, already exists, and it remains as it is, so that for emergency purposes the Governor-General will be able to pass such laws as he thinks necessary, provided that they will be liable, as they are now, to be vetoed by His Majesty in Council.

With regard to the provisions of the Bill relating to the Secretary of State, I need say little. They make no constitutional changes, but are designed to modernise and make more elastic the statutory provisions—many of which are relics of the days of the Court of Directors—relating to the working of the India Council. Power is taken to adopt the recommendation of Lord Crewe's Committee to appoint a High Commissioner for India, and no time will be lost in working out with the Government of India the details of this purpose if it receive the sanction of Parliament.

There is one further matter with regard to the Council—



namely, that the number has been reduced. The minimum was ten and the maximum fourteen. These are now reduced to eight as a minimum and twelve as a maximum. There are to be at least three Indian members of the Council. The salaries are to be £1,200 a year, with £600 extra for the Indian members, and the Committee remark that this salary was calculated on a pre-war basis, so that the Secretary is not precluded from granting to these members of the Council what other permanent officials are getting here—namely, a war bonus.

Part IV of the Bill relates to the Civil Services in India, and its provisions are intended generally, while enabling a new classification of these Services to be made, to safeguard the pay and position and rights to pension of existing members of those Services, and to pave as smooth a road as possible for future members. The Services, my Lords, need no tribute from me. Their work is plain for the world to see, and it is their work in the main, and its great results developing through the years, that have made India fit for this great experiment. But the passage of this Bill does not close the chapter of their ungrudging toil. India still needs, and will long need, men of the type which Great Britain has so long given her, and I refuse to believe that she will not continue to receive from the sons of Great Britain the same loyal and devoted service as she has received, to her lasting benefit, in the past. I also cordially echo the hope and conviction, expressed in the Report of the Joint Select Committee, that these Civil Services will accept the changing conditions and the inevitable alterations in their own position, and devote themselves in all loyalty to making a success, as far as in them lies, of the new Constitution.

Finally, the Bill gives power to appoint a Commission of Inquiry to report to Parliament on past progress, with a view to enabling Parliament to judge what further advances can be made. The Bill provides for one such Commission after ten years' trial. This does not imply the belief that in ten years the process of training will be complete. It is perhaps unusual to legislate for an event ten years ahead ; it would be clearly inappropriate to legislate for a longer period. But periodical inquiries are of the essence of the scheme, and the Bill would obviously be incomplete without some provision of this kind.

## THE INDIAN CONSTITUTION.

So far as Part VI of the Bill is concerned, there is only one clause to which I need draw your Lordships' attention—namely, Clause 42, which modifies Section 124 of the principal Act with regard to persons engaged in any trade or business becoming members of the Executive Council or Ministers, provided they do not, during their term of office, take part in the direction or management of that trade or business. The changing conditions of the country absolutely require that there should be some such provision made, because, if it is not, the Government will lose probably the benefit of people who are best calculated by their services as commercial or mercantile people to take part in the actual work of Government.

I fear that I have made a large draft upon the patience of your Lordships' House. But even if there are those amongst your Lordships whose position in this House would lead them to view my presentment of this matter critically and with caution as coming from a representative of His Majesty's Government, I am confident that the position which it is also my privilege to hold, of a representative of my countrymen, will have ensured me an indulgent and sympathetic hearing. Above all, I am confident that there is no member of this House who will be deterred by individual opinions or by my personal shortcomings from approaching the examination of this Bill in that traditional spirit of British fairness and impartiality, and with that earnest desire for the advancement of India's welfare, which has done so much for the betterment of India in the past.

There may be those amongst your Lordships who think that the passage of this Bill will not advance India's welfare, who think that the system of government which has, with little essential change and with so many beneficial results, endured through the changes of the nineteenth century, should be continued, unchanged in essentials, through the twentieth century, and that the time has not arrived to sever the leading strings. Believe me, my Lords, that is a view which, if you wish to secure a sense of gratitude and contentment amongst the populations of India, can no longer be maintained. The whole course of your administration of India, the whole of its fruitful results, culminating in the recognition which you have accorded during the past five years to India as a real partner in the Empire, have produced ex-

pectations (and I say justified expectations) that you will now agree to treat her as having outgrown her political infancy. I do not claim, and reasonable Indians do not claim, that her people as a whole have to-day reached, politically, man's estate. If I claimed this, I could not consistently support this Bill. But I do claim on behalf of my countrymen that they have reached the age of adolescence. This stage of growth is notoriously a difficult stage. It is surely human experience that the guardian best serves his ward's interests, and best conserves a relationship of mutual trust and affection, who so orders his control at this period that the aspirations for freedom and self-expression which inevitably accompany healthy adolescence should receive his wise and reasonable indulgence, and that active control should be exercised only to prevent irretrievable errors and to correct undesirable developments.

I believe that this Bill will enable the British Parliament to adopt that attitude towards India, and I have sufficient faith in the character of my countrymen, and in the essential wisdom and justice of the Mother of Parliaments, to believe that the results of this measure will be to inaugurate a relationship between them which will enable India in due time to reach the full stature of a prosperous, loyal, and grateful partner in the privileges and duties which belong to the great world-family of the British Empire.

Lastly, I ask your Lordships' leave to address a few words to those of my fellow-countrymen who may still be inclined to dispute the substantial nature of the advance proposed. Of course, I do not agree with them ; but even if there was any proof in their doubts and suspicions, let me tell them in the words of the great Book, if I may do so without irreverence, that what is being given to India is like the grain of mustard seed which a man took and sowed in his field, which now is the least of all seeds, but when it was grown it was the greatest amongst the herbs and became a tree so that the birds of the air came and lodged in the branches thereof.

## **XIX.—The Earl of Selborne's Speech in the House of Lords on the Government of India Bill, 1919.**

THE EARL OF SELBORNE : I had the honour of being Chairman of the Joint Select Committee which dealt with this Bill with hardly any interruption for the best part of five months, and therefore necessarily I became familiar with the questions at issue. Before proceeding to discuss any part of these questions I should like to join with those who have spoken before me in expressing my admiration for the manner in which my noble friend Lord Sinha moved the Second Reading of this Bill. To my very great regret I had to leave before he had concluded, but I know that the whole of that speech was on the same level as the commencement. And when we think of the circumstances of great personal sorrow under which my noble friend labours, his performance acquires all the more merit, and becomes all the more remarkable.

Although I was Chairman of this Committee, of course noble Lords all understand that neither I nor my noble friend Lord Middleton have any responsibility for this Bill, or for the policy on which it is based. That responsibility necessarily resides exclusively in His Majesty's Government. All we could do on the Joint Select Committee was to turn out the best Bill we could consistently with the Preamble of the Bill and according to the usual forms of Parliamentary procedure. And, of course, one's fate on a Committee of that kind is the same as one's fate in Committee of the Whole House. One is likely to be beaten on a Division. And therefore I do not conceal from this House, any more than Lord Crewe concealed from it, that there are features of this Bill, as it emerged from the Joint Select Committee, which are different from what they would have been if I had myself composed the Committee.

Take this question of the Government of India. Personally, if I had been responsible for this policy I should not have touched the Government of India at all while making this great experiment in the Provincial Governments, except to this extent—and here I differ from my noble friend Lord Sydenham—I think it is very wise to introduce three Indian

statesmen into the Government of India. I do not think too much effort can be made to give the opportunity for the highest experience and training to Indian statesmen in government in India. There can be no possible danger—I say quite deliberately—no possible danger in this wise extension in the number of Indians on the Viceroy's Council. Because, in the first place, these gentlemen are chosen by the Viceroy exclusively on his own judgment of those most fit; and in the second place, we deliberately removed the statutory barrier to the numbers of the Viceroy's Council, so that these three Indian gentlemen—and possibly four if the Legal Member is also an Indian—should not bear in this transition period too large a proportion to the total numbers of the Council. We also resisted the effort that had been made to reduce the number of members of the Indian Civil Service on the Council. Those members must be three. Three Indians are now introduced. The total number of the Council is unlimited, so that it can be formed exactly of the very best men whom the Viceroy, in conjunction with the Secretary of State, may choose.

I am not going to attempt in the course of these remarks to deal with every aspect of this most complicated and immense measure. But I want to revert to what I said, that I had no responsibility for the policy of this Bill. I am glad that I have no responsibility for the Declaration of August 20, 1917, because I think that Declaration was unfortunately worded. I will point out the fallacy which lies within that Declaration, according to my judgment. It is a fallacy which finds repeated echo in the rather gushing utterances which one reads from Members of the House of Commons on platforms and in the Press on this subject. The nature of the fallacy is this—that political institutions which have been found useful and good for England will necessarily be useful and good for India; and also, that when Indians have the power to evolve their own political Constitution they will necessarily follow the same lines as we have followed here in England. I believe those statements to be fundamentally untrue. I wholly and utterly disbelieve both of them. I do not believe that political institutions which suit us here are likely to be the same institutions that will best suit India; and I do not believe for one moment that, when Indians themselves are able to shape the course of their Constitutional

development, they will shape it exactly as our fathers shaped ours here. But the Declaration of August 20, 1917, has been made, and it is binding. You must consider it binding for this reason—nothing could be more unwise, more fatal, than that our fellow-subjects in India should learn to doubt our word. That statement was made not in the circumstances of the usual solemnity but it was at least acquiesced in by both Houses of Parliament, and it was made by the King's Minister and, therefore, with the King's sanction.

If that Declaration had not been made, in my judgment important changes were bound to come. They were necessary, they were due; it was right to make them then, and it is right to make them now. Why do I think this? I will try, without detaining your Lordships too long, to explain the situation as it seemed to unroll itself to me as I sat in the Chair of that Joint Committee. The Government of India was originally formed on the most simple lines possible. Its tasks were to preserve order, to administer justice, and to collect the revenue. It really was an absolutely ideal Government after the conception of government of the Manchester School. I do not suppose that such an economical Government has ever existed before in the history of the world, and I do not suppose that the world will ever again see its like. It is quite extraordinary for what it has done with a very small man-power and with the smallest possible Budget. Now, on to a Government formed under those ideas are gradually loaded all the complexities which this post-Victorian generation associates with the duties of government. This Government of India, so formed, is supposed to fulfil all those multifarious functions of the State which modern opinion considers appropriate to the State; and it has to do this at a moment when it is for the first time subjected to an incessant fire of acute criticism—a criticism never ceasing in India, directed in all its doings or non-doings in India, and brought over here and directed to the attention of the Press and of Parliament.

What is the result of all this? That the centralisation of Government in India has become worse and worse. Notwithstanding the heroic efforts of Viceroys like my noble friend opposite (Earl Curzon of Kedleston) to devolve on others some share of the burden that fell on them, yet, as I see the

story, the centralisation of Government has been constantly increasing, and for an obvious reason. Because so long as it was held that the whole Government of India was responsible to Parliament—mainly, of course, to the House of Commons—and the acuter and the louder the criticism became, and the more the functions of Government multiplied, the more the opportunities of criticism arose. The Government of India, in order to cover itself, would have referred to it more and more questions that ought to have been settled in the Provinces; and the Secretary of State, afraid of the House of Commons and of the Press here, required more and more questions to be referred to him by the Government of India—this at a time when, as I have said, the whole scope of Government in India was enlarging from the original simple idea to the modern very complex idea.

The result has been that the load has become too great for the machine. That is the main impression left on my mind. But although the load has become too great for the machine, do not suppose for one moment that anything has impaired or diminished the magnificent efficiency and devotion of the Civil Service in the different districts of India. The one thing that has impaired their efficiency has been that, owing to the same causes which I have endeavoured to describe, they have been chained far too much to their desks and to their offices, and have been too little free to go about their districts. The call on them for Returns, which have never been read, and which will never be read, is incessant—even worse than it is in this country; but they remain to-day what they have always been—namely, one of the very finest examples of the power of government and of devotion of our race.

The moral I drew from these impressions was that the time had come when provincial autonomy, or something like autonomy, was absolutely necessary; that an immense devolution of responsibility from the Government of India and from the Secretary of State to the Provinces was absolutely essential, or the whole machine would have broken down. Then the question at once arose how to get that devolution under the conditions of the case. So long as the Government of India remained what is called autocratic, that devolution—that autonomy—was impossible; because the Secretary of State theoretically remained responsible in the long run for every-

thing done in every part of any Government of India; and therefore it conflicted with all ideas of political theory here in England that a Provincial Governor should really be given large powers irrespective of the control of the Viceroy or of the Secretary of State.

Again, it must be remembered that there is an inevitable tendency of thought in our system of Empire which is always running towards the idea of self-government; and at this particular moment every one all over the Empire was shouting self-determination without any particular thought as to what it really meant, or to what extent it could be carried, or what limitations were necessarily implied in the idea. At the same time, the results of the system of education carried out in India now for so many years had become too full bearing. We had carefully trained a large body of very intelligent and efficient critics and, speaking broadly, given them no profession in life except that of criticism. The great defect of our system of education in India, so far as I can judge, has been that the agricultural, commercial, scientific, and technological side has been so sadly neglected and a career has been open only to those who have followed the arts. That is to say, apart from the bar and journalism—the avenue of politics being closed—there has been nothing whatever to do for the chief products of our education, except to criticise the Government which had created them.

Then, in addition to these facts there is the urgent call of wisdom and statesmanship to associate Indians in every possible way in the government of India. Therefore, the conclusion that I draw from these premises is that the changes, which, as I have said, were inevitable, must be in the direction of self-government, and the question that I am going to try to answer to-night in certain aspects is this—Is it the right form of self-government which we find in this Bill? I am not going to say anything more about the Government of India. I have said all I have to say about that. I am only going to speak about the Provincial Government. /

A great controversy has raged about the question of what is called the dyarchy, and whether the dual system contained in this Bill is right or wrong. Here I find myself in the sharpest possible conflict of opinion with my noble friend Lord Sydenham. After all I speak, and your Lordships will



pardon me for saying so, with some little experience as well as he does. I have not had the fortune of experience in India, but I have had now a good many years of experience of constitutional government at home and in the Dominions, and I have had experience of what is called autocratic government in the dominions. I hold in the strongest possible way that the Viceroy and the Secretary of State are absolutely right in advocating this system of dyarchy and that the Lieutenant-Governors of the Provinces who advocated a unitary system are absolutely wrong.

Not only do I advance that as an opinion, but I believe it is a matter susceptible of proof. Let me first of all very briefly remind you what the two systems are. According to the system of the Bill, the Government of each Province will consist of two different parts, both under the Governor. One part will represent the existing Government, the Governor in Council, which will be responsible for all subjects not transferred to the other part. All the subjects which are not transferred are all those which have to do with law and order, and the administration of justice, and other very important matters as well. To the other half is given the charge of the transferred services, and those are administered by Ministers acting under the Governor. The Governor may, if he thinks the occasion sufficiently serious, overrule those Ministers, but generally he has to act by their advice. If he thinks they are making a mistake he will tell them so quite frankly. He will say, "Upon you gentlemen rests the responsibility, I have told you what I think; do what you think proper."

The two halves of the Government will sit usually as a Joint Cabinet and discuss the affairs of both sides of the Government. When it comes to a decision there never will be the slightest doubt as to the responsibility for that decision. The decision on all subjects for which Ministers are responsible will be given by Ministers alone; on all subjects for which the Governor in Council is responsible, the decision will be given by the Governor in Council, without any interference by the Ministers. The system preferred by my noble friend Lord Sydenham and by the Lieutenant-Governors of the Provinces is this. There shall be no change from the existing system of the Governor in Council, except to introduce into that Council of the Governor an additional number of Indians.

## THE INDIAN CONSTITUTION

The advocates of both systems agree in these objects. The first is to train Indians in the art of self-government. The second is to make them responsible for their acts. The third is to transfer government to them in successive stages, if they prove themselves fit for it, until at last in the Provinces they will control even law and order, police and justice. Lastly, that while this period of training is going on, the Governor in Council shall remain absolutely free, without any kind of doubt whatever, to fulfil his responsibility for the maintenance of law and order. Both sides agree on those objects. I have described to you the methods by which they would fulfil them.

But there is one other point which they have in common. It is this. According to the dual plan Ministers are to be appointed, not because the Governor thinks those are the best Indians in his Province, but because he thinks those are the best men in the Council who will command the confidence of the Council. That is exactly the same reason for which Lieutenant-Governors and my noble friend Lord Sydenham would choose additional Indians for the Executive Council. The Lieutenant-Governors and Lord Sydenham do not propose to choose these Indians for the Executive Council because they are the best Indians in the Province, but because they are the best men available out of the Council who would command the confidence of the Council. My first point is this. In the Executive Council which my noble friend Lord Sydenham would have, you would have two bodies of men—the first members of the Civil Service chosen because they are efficient members of the Civil Service, and the second chosen because they command the confidence of the Legislative Council. From the very moment that you have within one Cabinet two bodies of men chosen from wholly different motives, there, whether you like it or not, you have dualism. That is dualism in essence, because you have two bodies of men in one Cabinet looking to wholly different quarters for their support. The members of the Indian Civil Service would look, as they do now, to their official chief, their colleagues, as the source of their inspiration and guidance. But the men selected for the Executive Council out of the Legislative Council, because the Legislative Council has confidence in them, must necessarily look to the Legislative Council, and whether you like it or not, even in this so-called unity plan,

you have all the essence of dualism but under the most disadvantageous conditions.

There is one mistake the Lieutenant-Governors and my noble friend make. They think that in their Executive Councils they could keep down the number of Indians to one or two chosen, as I have said, because they command the confidence of the Legislative Council. That is a perfectly idle dream. At the present moment, in my judgment, the Government of India in every Department is entirely undermanned, and the men who correspond to Ministers in this country are grossly over-worked. I want to lay the greatest stress on this—the cheapness, the economy, almost the stinginess in man-power of the Government of India at the present.

Under this system, with the largely magnified field of governmental activity, it is quite idle to think that you can run the machine in the Provinces with the same number of men that you have run it up till now. You will have to increase them. It is not a question of one or two Indians, but in my judgment in no government will there be less than three, and often four. Let me test the two systems.

The desire is to train the Indian statesman in the art of government and make him responsible before the whole of India for his acts. By the plan in this Bill he is pinned like a butterfly in a collecting box. He cannot possibly, if he makes mistakes—and he will make mistakes—palm off them on somebody else. The mistakes made by an Indian Minister, just as the wise and beneficent things he will do, will be credited to him. What happens under the plan of my noble friend? Nobody can tell, in the Executive Government of Indians and Indian Civil Servants he proposes, who is responsible for what. And there will be this perfectly certain result, that every popular thing will be credited to the Indians and every unpopular thing to the Civil Service; whereas by the plan of the Bill there can be no possible doubt as to where the responsibility lies. That is the first point.

The second point is with regard to the transfer of additional powers by stages to Ministers, or other Indian statesmen enjoying the confidence of the Legislative Council.

By the plan of the Bill you can have as many stages as you like. If at the end of ten years the Commission of In-

vestigation says that Indians in a Province have mismanaged their affairs it is perfectly simple to give them no more power. It will be quite possible, and it is intended under the Bill, to take from them some of the power transferred by this Bill. You can make the stages as quick, as short, as slow, and as long as you like, until the moment comes when, in any given Province, the Indian statesmen and Legislative Councils have shown their complete ability to cover the whole field of Government that law and order, and police, can be transferred to them. But there can be no stages whatever under the plan of my noble friend and the Lieutenant-Governors. No stages of any sort or kind. The moment must come when the whole field of government is transferred *en bloc*, including law, justice, and police to the Ministers enjoying the confidence of the Legislative Council. Therefore I claim to have proved conclusively that from the point of view of the two great objects—the training of Indian Ministers in responsibility, and devolving self-government to them by stages—the dual plan holds the field.

Let me look at the responsibility of the Governor and the Executive Council for law and order. It is agreed on both sides that during this transition period the Governor in Council in a Province must be free to carry out his responsibility for law and order without fear, let, or hindrance, and without the danger of impediment. Compare the two schemes in this respect. Under the scheme of the Bill a question of a law and order arises. The Lieutenant-Governor has to consult the members of his Executive Council. They may be composed of one member of the Civil Service and one Indian, or possibly, and rarely, of two members of the Civil Service and two Indians. The suggestion being that it may be the Indians in their unwisdom who may wish to interfere with him in the exercise of his responsibilities—if there is no suggestion there is no question at all involved in the matter—all that the Governor can do in this case is to discuss the matter with the two Indians and his Executive Council. After he has heard them he has simply to overrule their opinions because he has a clear majority. He has no difficulty about it whatever. By the plan of my noble friend there may be an Indian majority in the Executive Council. Instead of having two Indians and two Civil Servants, with himself to decide between them, there might easily be three

## LORD SELBORNE'S SPEECH.

or four Indians on the Executive Council and not more than two members of the Civil Service. The Governor's position in the execution of his responsibilities would be far more difficult in that case than under the Bill. Nothing would induce me to be responsible for putting a Governor into a position where I can quite imagine he would be unable to fulfil his responsibilities.

Therefore I claim to have been able to show, step by step, and looking at it from both points of view—the point of view of the Governor and also of Ministers—that this scheme of the Viceroy and Secretary of State which is called dyarchy absolutely holds the field. I am not going into detail on the other parts of the Bill. I would only say that the objects we had in making the Amendments we did were these. We desired to remove all possible causes of friction ; we desired to remove all shams , we desired to fix responsibility everywhere ; and we desired to leave the Government with real weapons to fulfil its responsibilities. I want to make that as plain as it is possible to make it. When we recommend that the Governor should be able to pass laws by ordinance, even if his Council object, so long as it is in fulfilment of his responsibilities, we wish him to have this power to do so. And the same with the Viceroy. The powers which we propose to confer upon them are real powers, meant for use if occasion should unhappily arise, always, of course, subject to the control of Parliament ; and we were careful to replace the Preamble, so as to include all the pertinent parts of the Declaration of August 20, because it had been said, even in our presence, by a witness, that whereas a part of that Declaration had authority, the rest, which said that the progress of self-government in India would depend upon the use which the people of India made of this gift of self-government, had no validity. Therefore we made it perfectly plain in the preamble that the future grant of self-government ought to depend upon the use which the people of India make of this grant of self-government. We also made it plain that for ten years there ought to be no change ; that what is given is a very great and potent gift—potent for good or for evil—and that ten years is absolutely nothing in the life of any country. At the end of ten years the best Commission that could be got together ought to be sent out to

see in each Province, and in India as a whole, what use has been made of the powers now given.

I want to say two things about the Indian Civil Service. It is difficult to speak on this subject in language that does not seem to be exaggerated. I do not believe a more magnificent set of men have ever served a country than the Indian Civil Service, and I think the way that they have been attacked in India by a certain set of Indians is a standing disgrace to those Indians in India. After all, India is the most conservative country in the world, and for Indian politicians to attack Indian Civil Servants because they too are conservative, seems to me a gross absurdity. It would be very strange indeed if the Indian Civil Servants with their traditions and their experience were not averse to big changes. I know of no service worth being a service, in any country in the world, where the feeling is not mainly that of conservatism. Therefore it should be perfectly clear to any Indian politician who chooses to think the thing out that it is only natural that the tendency of the Indian Civil Service should be one of criticism and doubt towards these changes.

I think even far worse is the kind of ingratitude which the Indian Civil Service have met with from some critics in this country. I think some of the reflections which have been cast upon them by certain of the Press here are such that you would not have thought it possible to be written. Nevertheless, with great respect, I would say to the Indian Civil Service two things : In the first place do not make too much of an idol of efficiency. There is efficiency and there is efficiency. In matters of law and order, and the peace of the country, you cannot be too efficient, but in all other spheres of activity of government Governments must make mistakes. They all make mistakes. I know what the Indian Civil Servant thinks. He thinks that these Indian Ministers and Governors will make great mistakes—so they will—and he cannot bear the idea of sitting there and having his advice disregarded and mistakes made. He has got to put up with that, because unless he does the Indian cannot be trained.

Has the Indian Civil Servant never made mistakes? Has this Government never made mistakes? Of course I do not mean the Government now in power. We who have had some years' experience of Governments in England do not

exactly regard them as infallible. We have seen some pretty bad blunders ; and so long as the blunders are reparable and not irreparable that is the only method by which any nation can be trained in the arts of self-government. The second thing I would say to the Indian Civil Service is this : Your work will be different, your position will be different, but so far as this humble admirer of your great work can judge it is not going to be in the future a bit less interesting. It is going to be of a different kind, but I am quite certain that the service you can render to India and the Empire is going to be even greater in the future than it has been in the past.

My Lords, I have nothing more to say, except this word to my Indian fellow subjects. I think they have come nearer than some of them know to turning a very great body of public opinion in this country against their aspirations. I do not think they realise the extent of the misgivings which their attitude on the Rowlatt Act has caused in this country, and for this reason, that none of us can think of any other civilised country in which highly educated and intelligent politicians would have taken the same view of the Rowlatt Act, under similar conditions, as was taken of it in India. Therefore, if they want, as I know and believe very many of them do, to retain the good opinion of their fellow subjects who are taking part in government in different parts of the Empire, and to show that they, no less than we, deserve a full measure of the power of self-development and self-governing, let me humbly and respectfully advise them to weigh their words before they use them, and to think of the effect that they will have in countries far beyond the limits of India.

Before I sit down I want, if I may, to draw the attention of my noble and learned friend on the Woolsack, and of Lord Finlay and Lord Sumner, and also of the Leader of the House, to a legal conundrum which I brought forward during the sittings on the Bill, but which I was not able to persuade the draftsman was of real importance. The legal system of India as between the Government of India and the Provinces is one which is called concurrent jurisdiction. When I had the honour of taking some part in framing the Constitution of the Union of South Africa we received a special message from Sir Wilfrid Laurier, then Prime Minister of Canada, to this effect : "Shun concurrent juris-

diction as far as you possibly can—it is the very devil. It has been the curse of Canadian politics; the snare of statesmanship. Avoid it.” We did avoid it in South Africa, and at the proper stage of this Bill I raised the question to our legal draftsmen—“Was the Parliament of India sovereign as regards the Provincial Legislatures?” “No.” “Was it a federal distribution of power?” “No, concurrent jurisdiction.” “What happened if a Provincial Act is found to be repugnant to an All-India Act?” They said the case had never arisen, such care had been taken to prevent it, and in this Bill all power was given to the Provincial Legislatures to repeal sections of Indian Acts so that there should be no inconsistency or repugnancy. “Yes,” I said, “but there is going to be a far greater volume of provincial legislation in the future than there has been in the past, and you cannot argue from the comparatively simple code of law of the past as to what there is going to be in the future.” “It is perfectly certain,” I said, “that Provincial Acts will be passed that are inconsistent with Indian Acts, of which the Indian sections are not repealed by inadvertence, and perhaps the repugnancy or inconsistency may not be found out for a year or two. In that case which Act is to prevail, the India Act or the Provincial Act?” I should have thought, and I still think, there ought to be a provision in this Bill that where there is repugnancy or inconsistency between Provincial and Indian Acts, that the Indian Act should prevail. That is not the view of the legal advisers of the India Office. They say that the latest dated enactment should prevail. I cannot believe that to be right, because a Provincial enactment may be inconsistent with an India enactment in a matter that really affected far more than the Province in which the latest enactment had taken place. I informed the draftsmen that I would take the opportunity of laying it properly before the Law Lords of this House, and particularly before the Lord Chancellor. Of course, when I have their authority for saying that in their opinion this Bill may operate leaving it to the Courts to decide in every case which of the two Acts should prevail—the Provincial or the India Act—I shall bow to their judgment. Until I hear from them to the contrary I shall still believe that it will be a very wise protection in this Bill to put in words to the effect that whenever there is inconsistency or repugnancy the All-India Act should prevail.



## XX.—Rt. Hon. Mr. Montagu's concluding speech in the House of Commons on the Government of India Bill, 1919.

MR. MONTAGU : I do not propose to detain the House very long as I have made so many speeches on this Bill, but I should like to close with one or two observations. I do not think there is any use in following my hon. and gallant Friend (Colonel Yate) into the history of the matter, but he raised one or two new points. I venture to think he would have been the first to criticise if the announcement of the 20th of August by the Government had been made in the name of the King-Emperor, and he would have told us that we had jockeyed the House into accepting a statement that they would not have been able to criticise because it came from His Majesty. For another reason I wanted to make it in the way that it was made because His Majesty the King-Emperor, who as my hon. and gallant Friend truly said, is personally venerated throughout India, could not be associated with the announcement until I was sure that Parliament was going to carry it out. It is no use making announcements. What you have got to make is effective application.

But all those things are past. Whatever may be said against the methods by which this Bill has been presented, a Bill which has taken from its inception something over three and a half years, and whatever may be said as to the time for discussion in the House, I gladly acknowledge that this seems to me to be the most responsible and, at the same time, the proudest moment of my life. I have been associated with the Government of India not as my hon. and gallant Friend said, for four months, but for six years, for four years as an Under-Secretary and for two years as Secretary of State. I have kept before me one ambition, and that was to have the privilege of commending to Parliament what I believe to be the only justification of Empire, a step of self-government for India. It is quite true that my hon. Friend behind me said, by way of a taunt, that I once belonged to a party or the section of a party called the Liberal Imperialists, but I never had more than one conception of Imperialism in my mind, and that was that there could be no pride or pleasure

in a Crown Colony, no pride or pleasure in domination or subordination, no pride or pleasure in flying the British flag for the benefit of British trade, but that the only Imperialism that was worth having was a trusteeship which was intended to develop the country under the British flag into a partnership in the Commonwealth, and it is for that reason that I commend with confidence this Bill to the House and feel proud to think that in a few minutes it will not longer be the Bill of the Government but the Bill of the House of Commons, for which all Members of it will be responsible.

I think it is a great thing for the history of India that the House of Commons has given this Bill up to this stage in a spirit of almost complete, if not complete, unanimity, neither snatching a little more here nor saving a little more there, but giving it generously and with a set purpose that this shall be a transitional Constitution on a road which the House of Commons will to-day determine to follow. Therefore, if the Bill is to be accepted both in its provisions and in what it intends to be, a transitional stage in the development of self-government, a great responsibility rests on the Parliaments of the future. No Constitution of the kind seems to me to be of any use unless it is carried out by those who will be responsible for the government of India on behalf of Parliament—the Secretary of State in Council and the Government there—in the letter and in the spirit. The powers that are reserved to the Government and are not to be controlled by the representatives of the Indian electors must be exercised as though they were applicable to a country of growing national consciousness on the road to self-government and not as if we were administering a great estate. Secondly, Parliament, I think, must see that you do not at one and the same moment withhold things for a particular reason and then refuse the opportunity of procuring them. Do not at one and the same time say it is only a minority that wants these things and then complain when that minority tries hard to convert the majority. You must expect to see political life develop throughout India. Do not deny to India self-government because she cannot take her proper share in her own defence, and then deny to her people the opportunity of learning to defend themselves. These are problems of which Parliament takes upon itself the responsibility by the passage of this Bill. Then I would say also that I think the passage of

this Bill entails the end of the old era. Let us forget the sores of the past, let us cease to abuse whole sections, whole castes, whole races of the Indian people and on the other hand, is it too much to ask that the Indian representatives of India will cease to abuse the Indian Civil Service, who, whatever differences of view there may be, are after all largely responsible for bringing India to this stage in her history? Let us forget the past and start afresh. I object to the hon. Member for Oxford University (Mr. Oman) saying that he is the representative of the Indian Civil Service in this House. I am; it is my business, and my privilege, and my pride to be that. I have never been asked by a Civil servant yet to ask Parliament to warp the history of India for the benefit of the Civil Service, and I think it is upon me to ask every section of Parliament to see that these Indian Civil servants, who work so unselfishly in India, and who will be our help and mainstay in carrying out this policy, do their work unhampered by often cruel criticism, particularly in circumstances when they have not the opportunity of any Parliament in which they can defend themselves. Let us wipe all that out, and let us start afresh. Let us begin on both sides with a desire to carry out the policy of Parliament because it will be the policy of Parliament when this Bill finally goes through.

One word more. I welcome the appearance of the Labour party in an organised capacity in the great part which it has taken in the discussion of this Bill. I can only hope that some of my hon. and right hon. Friends opposite will take an early opportunity of visiting that country. I could not help thinking, as I listened to my right hon. Friend who sits on the Front Opposition bench, in talking about the representation now, at this moment, of industrial labour in India, that he had not yet got—how could he?—a real conception of what industrial labour is in India to-day, and how small is its development. I share with him the welcome which he gave to trade unionism in India, and I hope that it will be, as it has been here, a great power for achieving a better standard of life and conditions of labour in India. But it is no use trying to get a franchise to-day and now for which you have not got the material. I would beg those who have made themselves particularly the spokesmen of Labour on this question—my hon. and gallant Friend

## THE INDIAN CONSTITUTION.

(Colonel Wedgwood), one of the most popular men in the House, who has shown himself so close a student and so well informed of all the intricacies of this Bill, and my hon. Friend the Member for Bishop Auckland (Mr. Spoor)—to lend their help in shaping the new era which I have ventured to predict.

Do not merely support a particular view because it is held by people who are in a hurry, without feeling quite sure that they understand the situation. I have read a letter this morning written on behalf of the Congress Committee. It is one thing to ask for more than this Bill does; it is another thing to fail completely to understand what it does. It is not necessary to belittle what it does in order to ask what it has done, and it seems to me there are people speaking on behalf of organisations in India who understand some of the provisions, some of our Parliamentary safeguards and constitutional usage, and—I say it without offence—understand some others as little as my hon. and gallant Friend who spoke last understands them. If Labour will act not only as the spokesman of what I may call the extremist party in India, but also as the restrainers of some of the misapprehensions among them, I think that they will find that they will help in the development of political life in India among those who are now looking to them for leadership and guidance, and although I try to realise there are great dangers and anxieties about this Bill, although I would not minimise for one moment the responsibility which I feel, and which I ought to feel, and which I think the House ought to feel, yet I am perfectly certain that there is no better way of consolidating the British Empire than by a measure of this kind, and steps in this direction. I need only conclude with one word of thanks to those who have not been mentioned. I do not refer now to members of the Committee who have sat on this Bill, but I refer to the witnesses whose evidence helped them to arrive at their conclusions.

# INDEX.

## A

- Act**, Elections Offences and Enquiries—, 1920, i 452.  
 —of 1772 (Regulating Act), i 160.  
 —of 1784 (Pitt's India Act), i 160.  
 Government of India—, i 14  
 Government of India—of 1858,  
 i 69-70  
 Government of India—, 1919  
*See Government of India Act, 1919.*  
**Acts**, Repeal of, i 415.  
 —repealed, i 422.  
 —of 1813, 1833, 1853 i 61.  
**Administration**,  
 Home—, i 59, ii 480-504  
 Br. Indian—, i 29  
**Administrative Boards**, i 81.  
**Advocate General**, i 399.  
**Appendices**, i 427-464.  
**Appropriation of revenues**, i 291,  
 332.  
**Assembly**, Legislative, i 250, 252,  
 254-275, ii 9, 130.  
**Assent** of Governor-General to  
 Acts of Indian Legislature  
 i 295  
 —of Governors to provincial  
 Acts i 351, ii 107.  
**Audit**, and Accounts, ii 304.  
 —in the provinces, ii 77, 100,  
 304, 357.  
 —of Indian accounts in the  
 United-Kingdom, i 141, 143.  
**Auditor**, i 143.  
 General statutory position of—,  
 i 376.

## B

- Balances**, provincial, ii 81  
 Control of Government of India  
 over—, ii 310.

## B.—Contd.

- Bills**, passage of, in Indian Legisla-  
 ture, i 241.  
**Bills**, return and reservation of, i  
 287, 296, 352-354.  
**Bishops**, i 400.  
**Borrowing**, provincial, ii 80, 93, 309.  
 —central, ii 339.  
**Boundaries** of provinces, alteration  
 of—, i 240.  
**British India**, i 43.  
**Budget**, Indian, i 289, ii 186.  
 Provincial—, i 329, ii 172.  
**Budget procedure**, ii 83.  
 Criticism of—by Sir S. Nair, ii  
 186  
 —provincial, ii 94.

## C

- Cabinet**, British, i 79.  
**Candidates**, qualifications for, i 318.  
 ii 208, 466.  
*(See Members)*  
**Certifying powers** of Governor-  
 General, i 282.  
 —of Governors, i 330-335.  
**Chamber of Princes**, ii 6.  
**Chief Commissioners**, i 238.  
 Legislative Councils of—, i 339  
**Civil Services** in India, i 372-377.  
**Commercial interests**, representa-  
 tion of, ii 206  
**Commission**, Statutory, i 359-362.  
 Public Services—, ii 71, 332.  
**Commissioners for the affairs of  
 India**, i 86.  
**Committee**, Lord Crewe's (on Home  
 Administration), ii 480-504.  
 Functions—, ii 220-375.  
 Franchise—, ii 188-219.  
 Grand—, ii 14, 103, 179.  
 Joint Select—, ii 506, 529.  
 Lord Meston's—(on Financial  
 Relations) ii 542-565.

**C.—Contd**

- Communal representation**, ii 198, 457.  
**Congress, Indian National**, ii 158.  
**Congress-League Compact** (on Mahammedan representation), ii 458.  
**Control**, Board of, i 60  
 — of Parliament over Indian affairs, i 95, ii 8.  
 — of Secretary of State, i 157, ii 138.  
 — — over expenditure of revenues, i 127-129.  
 — of Government of India over transferred subjects, i 192, 212, ii 232, 377, 240, 168.  
 — of Government of India over reserved subjects, ii 232, 379, 240.  
 — over provincial legislation ii 141, 383  
 — over provincial balances, ii 310, 510.  
 — over local and municipal finance, ii 311.  
 — over provincial expenditure, ii 342.  
**Council of India**, i 91-95, ii 484, 491, 502.  
**Council Secretaries**, i 181, 182, 228, 231, ii 186.  
**Council of State**, ii 9, 132, 217, 184, 468, i 247-249.  
**Council**, Governor in, i 220-223, ii 115.  
 Provincial Executive, i 220, ii 12, 58.  
 Provincial Legislative—, i 20, ii 12, 450.  
**Crown**, Powers and prerogatives of, i 63, 65, 78, 356.  
 Powers of—over Indian administration, i 65.  
 Power of—to disallow Acts, i 296, 352.  
 Order of—in Council, i 112.

**D**

- Declaration** of Aug. 20, 1917, ii 7, 42, i 16

**D.—Contd**

- Definitions**, i 417.  
**Depressed classes**, representation of, ii 453.  
**Despatch**, First, on Reforms. ii 34-142.  
 Fourth—on Functions Committees Report, 376-443.  
 Fifth—on Franchise Committees Report, ii 444-479.  
**Devolution Act of 1920**, i 196  
**Devolution of authority**, in the provinces, i 191, 196.  
**Devolution, financial**, ii 553.  
**Dissolution of legislatures**, i 255-256, 324-327, ii 107.  
**Division of field of Government**, ii 43, 52.  
**Division of Subjects**, i 190, 203, ii 252, 289, 393.  
 Principles of—, ii 226  
**Dualism or Dual Govt.**  
 ( *See Dyarchy* )  
**Dyarchy**, i 202, ii 42, 51, 573, 574, 592.  
 Arguments for—, ii 43, 55.  
 Limitation of—, ii 52.  
 Methods of—, ii 44.  
 Typical—, ii 52-55.

**E**

- East India Company**, i 69, 71.  
 Debts of, i 125  
**Ecclesiastical Establishment**, i 400.  
**Education**, transfer of, ii 228, 271.  
**Election**, direct and indirect, ii 196, 213.  
 —for Governors' Legislative Council, method of, i 314-317, ii 473, 476.  
 Final decision of doubts and disputes as to the validity of—, i 268-273, 319-324.  
**Elections Offences and Enquiries Act 1920**, ii 452.  
**Electors**, qualifications of, —  
 —for Council of State and Legislative Assembly, i 264-265, ii 192, 446.

E.—Contd.

- for Governors Councils, i 311.  
ii 192, 446.
- Electoralates**, scheme and size of, ii  
195, 448.  
Communal—, ii 457.  
Special—, ii 454.  
Urban and rural—, ii 464.
- Emperor of India**, i 67.
- Empire, the British**, i 45.  
Integral part of—i 44
- Executive, case for a dual**, ii 41,  
44.
- Executive Council of the Govern-  
or-General**, i 168-173.
- Executive Councils, Provincial** i  
220, ii 12, 58, 115.  
Members of—, i 220-222  
Relation of—with ministers, i  
224.  
Procedure in case of difference of  
opinion in—, i 226.
- Expenditure, provincial**, ii 75

F

- Fifth Despatch** (On Franchise  
Committee's Report) ii 444-  
479
- Finance Department**, its position  
in the provincial Govern-  
ment ii 305
- Finance**, Memorandum on, ii 335  
Existing system of—, ii 335.  
Reforms proposals regarding—,  
ii 345.  
Provincial—, ii 15, 72, 336, 344,  
352.
- First Despatch** (on Reforms) ii 34-  
143.
- Fourth Despatch** (on Functions  
Committee's Report) ii 376-  
443.
- Freedom of speech** in Indian  
Legislature, i 287-288.  
—in provincial legislatures, i  
342
- Functions Committee, Report of**,  
ii 220-375 *See Division of  
Subjects.*

G

- Government of India Act, 1919**,  
i 13, 75, 91, 92, 107, 114,  
143, 167, 181, 190, 213, 220,  
223, 228, 232, 233, 241, 247,  
250, 252, 255, 259, 262, 273,  
281, 289, 293, 299, 324, 327,  
342, 345, 350, 351, 352, 356,  
359, 373, 376, 377, 379.
- Governor-General of India**—early  
history of—i 161-166.  
Certifying power of—i 282.  
Executive Council of—, i 168-  
173.  
Legislative powers of—, i 285,  
293, 297.  
Position and powers of—, i 162.  
Power to execute assurance in  
India of—, i 141.  
Statutory powers of—, i 163.  
Powers of—in absence from  
council, i 180  
Power of—to dispose of escheat-  
ed property, i 150.  
Provision for absence from  
council of—, i 180.
- Governor-General in Council**,  
powers and duties of, i 154.  
Business of—, i 177-178.  
Control of—over transferred  
subjects etc. etc.—i 192, 217  
*See control of Govt. of India*  
Functions of—, i 174-177  
Relations of—with Secretary of  
State, i 157.  
Restrictions on power of—to  
make war or treaty, i 183,  
188.
- Governor in Council**, ii 115.  
Business of—, i 223.  
Relations of—with Ministers, ii  
116, i 224-226.
- Governor acting with ministers**,  
i 202.  
Transfer of subjects to the ad-  
ministration of—, i 202-207.
- Governors**, Appointment of, i 214,  
ii 56 181.  
Certifying power of—, i 337.  
Instrument of Instructions to—,  
i 216-218,

G.—*Contd.*

- Members of Executive Councils of—, 220-222.  
 Legislative Council of—, 1 299-309.  
 (See *Legislative Councils.*)  
 Pay and status of—, 1 214-216, 11 57.  
 Provision for absence of—, from meetings of Council, 1 227.  
 Statutory powers of—, 1 218-220.  
**Government**, responsible, 1 39.  
**Government**, provincial, 11 11, 55, 303, 377, 446.  
**Government of India**, 1 55, 11 8, 139, 183, 468.  
 —Act (with annotations), 1 13-419.  
 Responsibility of—, 1 57.  
 The Executive—, 11 8, 129.  
 —Legislative arrangements, 11 134.  
 See *Legislative Assembly.*  
 See *Council of State.*  
 Control of—over provincial governments, 11 232, 310.  
 See *under Control.*  
 —Finance, 11 335.  
**Gradual Development**, 1 31.  
**Grand Committee**, 11 14, 103.

H

- Heads of Provinces**, Lord Chelmsford's address to, 11 19.  
 Majority Minute of—, 11 23.  
 Minority Minute of—, 11 31.  
**High Courts**  
 Constitution of—, 1 382.  
 Additional—, 1 398.  
 Jurisdiction of—, 1 391.  
 Law to be administered by—, 1 397.  
**High Commissioner for India**, 1 146; App. D.  
**Home Government**, 1 59.  
 House of Commons, 1 22.  
 House of Lords, 1 23.  
 See *Parliament.*

I

- India Office**, 11 140, 110, 496.  
**Indian Civil Service**, 1 378-382.  
 Offices reserved to the members of—, 1 421.  
**Indians**, 1 29.  
 —Increasing association of, 1 26.  
**Indian appointments**, 1 115.

J

- Justice of the Peace**, 1 357

K

- King Emperor's Proclamation** (1919), 11 1.  
 See *Crown.*

L

- Landholders**, Representation of, 11 455, 205.  
**Laws**, Validity of Indian, 1 355.  
**Legislative arrangements**, 11 103  
 (Central or Indian)—11 133.  
**Legislative Councils**, Provincial, composition of—, 1 299-309, 11 12, 210.  
 Business and procedure in—, 1 329, App. B.  
 duration, sessions, dissolution of—, 1 324-327, 11 107.  
 Electors qualifications of , 1 311, 11 192, 446.  
 Acceptance of office by members of—, 1 350.  
 Election of members of—, 1 314.  
 Qualifications of—, 1 318, 11 466, 208.  
 Presidents and Deputy-presidents of—, 1 327.  
**Legislative Assembly**  
 Composition of—, 1 250-254, 262, 247-249, 262 11 9, 130, 211, 470.  
 Duration, sessions, or dissolution of—1 225-258.  
 Membership of—, 1 259-262.  
 See *Indian Legislature, Election and Elector*



## INDEX.

### L.—Contd.

- Legislative control over provincial finance**, ii 99.
- Legislative Councils, Provincial**  
 Upper houses in—, i 303 ii 108.  
 Rules of business in—, ii 109.  
 Questions, resolutions and privileges in—, ii 110.  
 Standing committees of—, ii 112.
- Legislature, Indian**, i 241.  
 Composition of—, i 247.  
 Joint sitting of—, i 286.  
 Limitation of powers of—, i 275-288.  
 Landmarks in the evolution of—, i 241-247.  
 Powers of—i 273-276.  
*See Legislative Assembly*
- Lieutenant-Governor**, i 234.  
 Appointment of—i, 235.  
 —in Council, Business of—, i 238.  
 Executive Councils for—i. 236.  
 Power to create—, i 236.  
 Legislative Councils of—, i 339.
- Local and municipal finances**, ii 311.
- Legislatures, local**, i 338.  
 Assent to Acts of—, i 351.  
 Business of meetings of—i 344-345.  
 Power to constitute new—, i 341.  
 Powers of, i 345.  
 Vacation of seats in, i 350.
- Local Self-government**, i 32, ii 15.  
 —Act, Bengal, i 35.
- Local Governments**, i 189, 190.  
 Relation to Governor-General of—, i 189.  
 Agency functions of—, i 201.  
 Revised system of—, i 213.  
 Contributions payable by—, to Govt. of India, i 207-209.
- Lord High Chancellor**, i 81.

### M.

- Members, of Council of India**, i 91.  
 —of Governor-General's Council, i 168.

### M.—Contd.

- of Governor's Executive Council, i 220.  
 —of Council of State, i 248.  
 —of Legislative Assembly, i 250.  
 —of Governor's Legislative Council, i 301, 305, 336, 310.  
 Maximum number of—of Legislative Councils, i 420.
- Memorandum for Functions Committee** (from Government of India), ii 313, 320.
- Memorandum on finance**, ii 335.
- Minute by Governor of Bengal and L. G. of Bihar and Orissa**, ii 31.
- Majority Minute from Provincial Governments**, ii 23.
- Minute of Dissent by Sir Sankaran Nair**, ii 151.
- Ministerial responsibility**, i 78.
- Ministers, appointment and tenure of—**, i 228, ii 60.  
 Dismissal of—by Governors, i 230, ii 283.  
 Number and pay of—, i 222, 230, ii 61, 512.  
 —and the Governor, ii 116, 280, 166.  
 Relations of—with Governors in Council, i 224, ii 156, 280, 507, 512.  
 Responsibility of—to the Legislature, i 229.
- Ministry, British**, i 76.  
 Relation of—to the Crown, i 77
- Montagu, Rt. Hon. Mr. Speech by—**, ii 601.
- Montagu-Chelmsford Report, Summary of—**, ii 8-18, i 17-21.  
*See Notes under Sections in Pt. I.*
- Mahomedans, representation of** ii 458.

### N

- Nair, Sir Sankaran**, minute of dissent by, ii 151.
- Native States**, ii 17  
 Relations of—with British Government, i 184-188.

# THE INDIAN CONSTITUTION.

## N.—Contd.

- and International Law i 185.
- Nomination, representation by** ii 207, 217.
- Non-Brahmans, representation of** —, ii 161, 202, 462.
- O**
- Offences**, of persons holding office under Crown, i 406.
- Officials & non-officials**, definition of, i 260.
- Office**, acceptance of, i 350.
- Ordinances and regulations**, i 297.
- Orders and communications**, of Secretary of State, i 107.
- Order in Council**, i 112.
- on High Commissioner of India. See App. D.

## P

- Parliament**, i 21, 95, 106, ii 8.
- Functions of—, i 23.
- Responsibility of Gov. of India to—, i 57.
- Statutory Powers of—, over Indian affairs, i 96-98
- Sitting or voting in—, i 99
- Order directing hostilities to be communicated to—, i 109
- Privileges of—, i 25
- Control over Indian affairs by— i 95, ii 8.
- Act of 1911, i 24.
- Party, political**, i 42.
- Payment** of current demands, i 135.
- of members of legislatures, i 246.
- Preamble**, notes on, i 14-58.
- Prerogatives** of the Crown, i 63, 65, 78, 356
- Presidents** of Council of State, i 248-250.
- Of governor's legislative councils, i 327.
- of Indian Legislative Assembly, i 254
- Privileges of Legislatures**, ii 110

## P.—Contd.

- See *Freedom of Speech*.
- Privy Council**, i 82.
- for India, ii 8, 136.
- Judicial committee of—, i 83.
- Progress**, i 47.
- Progressive realization**, i 36
- Provinces of India**, i 52.
- constitution of new—, i 232.
- Provincial Governments**, i 52,
- ii 55, 155, 303, 377, 446.
- Matters relating to—, i 53.
- See *under Governors*.
- Provincial, executives**, i 220, ii 12,
- 58, 115.
- Governors, i 214, ii 56, 115, 116
- Ministers, i 228 ii 60, 116, 283
- Services, i 372-375, ii 70, 329.
- Subjects, i 195, ii 405.
- Legislation, i 345, ii 12, 103,
- 242, 383.
- Finance, i 197-201, 205-207 ii 15, 72, 303, 336 344, 352.
- finance, principles of, ii 73.
- Expenditure, ii 75.
- Revenue, i 197-201, 205-207 ii 77.
- Audit, ii 77, 100, 304, 357
- Taxation, ii 83, 93, 306.
- Balances, ii 81, 310.
- Borrowing, ii 80, 93, 309
- Budget, ii 94.
- Contributions to Central Govt by—, i 334, ii 550
- Councils (*See Legislative Councils*), i 299, ii 210.
- finance, control over, ii 96, 304.
- Settlement, ii 336.
- Public Services** (under Reforms)
- See *Services*.
- Public Services Commission**, i 376
- ii 71, 332.

## Q

- Qualifications of candidates and electors.**
- See *Members and Electors*.
- Queen's Proclamation**, 1858, i 159
- Questions**, ii 110. See App. A. & B.

# INDEX.

## R

- Regulations and Ordinances**, i 297.
- Report** of Lord Crewe's Committee on Home Administration, ii 480-504
  - of Functions Committee, ii 220-375.
  - of Franchise Committee ii 188-219
  - of Joint Select Committee (on Retorts), ii 506-529
- Montagu-Chelmsford—on Reforms, ii 8-18.
- of Lord Meston's committee on financial relations, ii 542
- Representation** by nomination, ii 207, 217.
  - Communal—, ii 198, 457.
  - of commercial interests, ii 206, 456.
  - of depressed classes ii 453.
  - of Europeans, Anglo-Indians, and of Indian Christians, ii 201.
  - of Landholders, ii 455.
  - of Mahomedans, ii 198, 458.
  - of Non-Brahmins, ii 202, 462.
  - of Officials, ii 202.
  - of rural and urban areas, ii 464.
  - of Sikhs, ii 198.
  - of special interests, ii 205
  - of Universities, ii 205.
- Reservation of Bills**, i 352.
- Reserved subjects**, ii 405.
  - Control of Government of India over—, ii 379.
- Resolutions**, ii 110. See i App. A. and B.
- Responsible Government**, i 39, ii 36.
- Responsibility**, i 51
  - ministerial, i 78
- Revenues**—
  - allocation of— central and provincial, i 191, 197-201.
  - for transferred subjects, i 191, 197, ii 168.
- Proposals for the appropriation of Indian—, i 291

## R.—Contd.

- Proposals for the appropriation of Provincial—, i 332.
  - Application to military expenditure of—, i 129-132.
  - Central, i.e. all-India—, i 122, 124, ii 338, 339.
  - Expenditure of—, i 128
    - remitted to the United Kingdom, i 133.
  - Royal Proclamation announcing His Majesty's assent to Government of India Bill**, 1919, ii 1
  - Rules for Governors' Legislative Councils**, i 441.
    - for Indian Legislates, i 427.
  - Election—, i 314-317, 264-265, 268-273, 319-324, 311.
- ## S
- Sankaran Nair**, Sir, minute of dissent by, ii 151.
  - Salaries, leave, appointment, etc.**, i 362-371, 4.
  - Secretary of State**, i 74, 75, ii 8, 138, 483.
    - Accounts of—, i 132.
    - Correspondence between—and India, i 107.
    - Control of—over Indian affairs, i 127, ii 486, 138.
    - Establishment of—, i 110, 111.
    - Powers and duties of—, i 84, 86 ; ii 488
    - Relations of—with Governor-General in Council, i 157.
    - Relaxation of control of—, i 114 ; ii 138.
    - Salary of—, i 87.
    - Suit by or against—in Council, i 150, 151.
  - Secretary of State in Council**, powers of, i 100-105.
    - Power of—for sale or purchase of stock and receipt of dividends, i 137.
    - Power of—to sell, buy or mortgage property, i 144-46.
    - Duty of—to lay accounts of the revenues of India before Parliament, i 138-40.

**S.—Contd.**

**Selborne**, Lord, speech by, ii 588.  
**Self-governing institutions**, i 32.  
**Services**  
 All-India, civil—in India, i 372-377 ; ii 64, 322.  
 Classification of—, i 209-210  
 Indian Civil—, i 378-382.  
 Provincial—, ii 70-329  
 Public—i 209, 210, ii 17, 62, 299-321, 437.  
 Subordinate—ii 71.  
**Sikhs**, representation of, ii 199.  
**Southborough Committee's Report** ii 188.  
**Sinha**, Lord, i 35, 169.  
 Speech by—, ii 565.  
**Speech**, Lord Chelmsford's, i 36, ii 19.  
**Speeches by**  
 Lord Chelmsford, i 36, ii 19.  
 Lord Sinha, ii 565.  
 Lord Selborne, ii 588.  
 Rt. Hon Mr. Montagu, ii 601.  
**Statutory Commission** i 359-362.  
**Subjects**, transferred ii 413, 165, 232, 289.  
 All-India—, i 195, ii 397.  
 Classification of central and Provincial—, i 190, 193-195, 213.  
 Reserved—, ii 405, 170.  
 Provincial—, i 195, ii 405, 228, 252.  
 Settlement of doubts regarding —, i 210-211  
 Transfer of—, i 191.  
**Successive stages** ; i 48.

**T**

**Taxation**, provincial, ii 80, 92, 370.  
 Division of—, ii 323, 510.  
 Control of—, ii 338.  
**Transfer of functions or subjects**, i 191, 202, 268.  
**Transferred subjects**, i 121.  
 Allocation of revenues for . i 191, 205.  
 Control of Government of India over—, ii 377.  
**Treasury control over provincial finance** ii 96

**U**

**Unitary Government** proposed by Heads of provinces, ii 47.  
 Governor-General's criticism on, ii 48-50.  
 Minority minute on—, criticism of, ii 51.  
**Universities**. representation of— ii 205.  
**Upper houses in provincial legislatures**, i 303, ii 108.

**V**

**Validity of Indian laws**, i 355  
**Vernaculars in Legislative Councils**, ii 110.  
**Votes**, casting—, i 179  
 Majority of—, i 105.  
**Voting, method of**—ii 198.

**W**

**War and treaties**, Governor-General's power of making —, i 183.

[The figures *i* and *ii* indicate Parts I and II respectively]

